

No. 16422✓

United States
Court of Appeals
for the Ninth Circuit

NATIONAL LABOR RELATIONS BOARD,
Petitioner,
vs.

CALIFORNIA COMPRESS COMPANY, INC.,
Respondent.

Transcript of Record

Petition to Enforce An Order of the National
Labor Relations Board

FILED

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PAUL P. O'BRIEN, CLERK



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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

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NAMES AND ADDRESSES OF ATTORNEYS

MARCEL MALLET-PREVOST,
Assistant General Counsel,

THOMAS J. McDERMOTT,
Associate General Counsel,
National Labor Relations Board,
Washington, D. C.,

Attorneys for Petitioner.

AVERY, MEUX & GALLAGHER,
605 Security Bank Building,
Fresno, California,

DOTY & QUINLAN,
415 T. W. Patterson Building,
Fresno, California,

Attorneys for Respondent.

GENERAL COUNSEL'S EXHIBIT No. 1-C

United States of America
Before The National Labor Relations Board

Case No. 20-CA-1366

CALIFORNIA COMPRESS COMPANY, INC.,

and

INTERNATIONAL LONGSHOREMEN'S AND
WAREHOUSEMEN'S UNION

COMPLAINT AND NOTICE OF HEARING

It having been charged by the International Longshoremen's and Warehousemen's Union (herein called the Union) that California Compress Company, Inc. (herein called Respondent) has been engaging in and is engaging in unfair labor practices affecting commerce as set forth and defined in the National Labor Relations Act, as amended, 61 Stat. 136 (herein called the Act), the General Counsel of the National Labor Relations Board (herein called the Board), on behalf of the Board, by the undersigned Regional Director, issues this Complaint and Notice of Hearing, pursuant to Section 10(b) of the Act and Section 102.15 of the Board's Rules and Regulations, Series 6, as amended:

I.

On December 9, 1957, the above-mentioned charge was duly served on the Respondent.

General Counsel's Exhibit No. 1-C—(Continued)

II.

Respondent is and has been since 1953 a California corporation with its principal office located at Nielsen Avenue and Marks Street, Fresno, California, where it is engaged in the storage, handling, and processing of cotton.

III.

During the calendar year ending December 31, 1956, Respondent stored, processed, and handled in excess of \$20,000,000 worth of cotton for its customers, of which approximately \$15,000,000 was shipped by such customers to points outside the State of California. Respondent, during the same calendar year, received fees in excess of \$250,000 for its services from companies having their principal place of business outside the State of California.

IV.

The Respondent is engaged in and at all times material herein was engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

V.

International Longshoremen's and Warehousemen's Union is a labor organization within the meaning of Section 2(5) of the Act.

VI.

Lawrence A. Young, C. H. Kuhns, Henry Hayes, Donald Robinson and Charles Coons were at all times material herein supervisors of the Respondent within the meaning of Section 2(11) of the Act.

General Counsel's Exhibit No. 1-C—(Continued)

VII.

Respondent, acting by and through its officers, agents, and representatives whose names are set forth below, and on or about the dates appearing hereafter, engaged in the following acts and conduct:

A. On or about November 20, 1957, plant superintendent, Lawrence A. Young, interrogated and questioned employees as to their union activities and sympathies and warned and threatened them with loss of overtime, loss of earnings, and discharge, if they favored, joined, or assisted the Union.

B. On or about December 6, 1957, supervisors Lawrence A. Young, C. H. Kuhns, Henry Hayes, Donald Robinson and Charles Coons did circulate or had circulated an affidavit concerning the union activities and sympathies of the employees among said employees and interrogated and questioned them concerning their union activities and sympathies, and by coercion and threats induced certain of said employees to affix their signatures to the aforesaid affidavit.

C. On or about December 7, 1957, Superintendent Lawrence A. Young warned and threatened certain employees that if they had not signed the aforesaid affidavit concerning the union activities and sympathies of the employees they would have been discharged.

VIII.

By the acts set forth in paragraph VII, above,

General Counsel's Exhibit No. 1-C—(Continued) subdivisions A through C, both inclusive, and each of said acts, Respondent did interfere with, restrain and coerce, and is interfering with, restraining and coercing its employees in the exercise of the rights guaranteed them in Section 7 of the Act, and did thereby engage in and is thereby engaging in unfair labor practices within the meaning of Section 8(a)(1) of the Act.

IX.

The acts of the Respondent set forth in paragraph VII, above, subdivisions A through C, both inclusive, and each of said acts, have a close, intimate and substantial relation to trade, traffic and commerce among the several States of the United States and tend to lead to labor disputes, burdening and obstructing commerce and the free flow of commerce.

X.

The aforesaid acts of Respondent as set forth in paragraph VII, above, subdivisions A through C, both inclusive, and each of said acts, constitute unfair labor practices within the meaning of Section 8(a)(1) and (3) and Section 2(6) and (7) of the Act.

Please Take Notice that on the 11th day of March, 1958, at ten o'clock in the forenoon, in Room 210 of the City Hall, Fresno, California, a hearing will be conducted before a duly designated Trial Examiner of the National Labor Relations Board on the allegations set forth in the above Complaint, at which time and place you will have the right to

General Counsel's Exhibit No. 1-C—(Continued) appear in person, or otherwise, and give testimony.

You are further notified that, pursuant to Section 102.20 of the Board's Rules and Regulations, you shall file with the undersigned Regional Director, acting in this matter as agent of the National Labor Relations Board, an original and four (4) copies of a verified answer to said Complaint within ten (10) days from the service thereof and that unless you do so all of the allegations in the Complaint shall be deemed to be admitted to be true and may be so found by the Board.

Wherefore, the General Counsel of the National Labor Relations Board, on behalf of the Board, by the Regional Director for the Twentieth Region, on this 14th day of February, 1958, issues this Complaint and Notice of Hearing against California Compress Company, Inc., Respondent named herein.

/s/ GERALD A. BROWN,
Regional Director, National Labor Relations Board,
Twentieth Region.

GENERAL COUNSEL'S EXHIBIT No. 1-F

[Title of Board and Cause.]

ANSWERS TO COMPLAINT

Comes Now the respondent California Compress Co., Inc., and answering the complaint heretofore filed herein, admits, denies and alleges as follows:

I.

Admits the allegations contained in paragraphs I, II, III, IV and V.

General Counsel's Exhibit No. 1-F—(Continued)
II.

Answering the allegations contained in paragraph VI thereof, admits that Lawrence A. Young, C. H. Kuhns, Henry Hayes and Donald Robinson were at all times referred to in said complaint supervisors of the respondent; further answering the allegations contained in paragraph VI thereof, denies generally and specifically each and every, all and singular of said allegations except as hereinabove expressly admitted.

III.

Answering the allegations contained in paragraph VII, denies generally and specifically each and every, all and singular of said allegations, and in this connection specifically answers as follows:

A. Denies that on or about November 20th, 1957, or on any other date or at all, Lawrence A. Young, or any other officer, agent or representative of respondent, interrogated or questioned employees as to their union activities or sympathies, or warned or threatened them with loss of overtime, loss of earnings, or discharge, if they favored, joined or assisted the union; and in this connection specifically denies that said Lawrence A. Young, or any other officer, agent or representative of respondent, did at any time, or at all, interrogate or question employees as to their union activities or sympathies, or did at any time, or at all, warn or threaten any employee with regard to any matter or thing whatsoever.

B. Denies that on or about December 6, 1957, or

General Counsel's Exhibit No. 1-F—(Continued)
on any other date, or at all, supervisors Lawrence A. Young, C. H. Kuhns, Henry Hayes or Donald Robinson, or any other officer, agent or representative of respondent, did circulate or had circulated an affidavit, or any other document whatsoever, concerning the union activities or sympathies of the employees among said employees, or any of them, or interrogated or questioned said employees, or any of them, concerning their union activities or sympathies or by coercion or threats, or by any other unlawful or improper means, induced certain, or any, of said employees to affix their signatures to any affidavit or any other document whatsoever.

C. Denies that on or about December 7, 1957, or on or about any other date, Superintendent Lawrence A. Young warned or threatened certain, or any, employees that, if they had not signed any affidavit or any other document whatsoever concerning the union activities or sympathies of the employees, or concerning any other matter or thing whatsoever, they would have been discharged.

IV.

Answering the allegations contained in paragraph VIII, this answering respondent denies each and every, all and singular, the allegations therein contained; specifically denying that this answering respondent committed the acts set forth in paragraph VII of said Complaint or subdivisions A to C, inclusive, of said paragraph VII, or that this answering respondent interfered with, or coerced, or has

General Counsel's Exhibit No. 1-F—(Continued) interfered with, or restrained, or coerced, its employees in the exercise of the rights granted them in Section 7 of the Act, or any other Section of the Act, or that they have restrained, coerced or interfered with said employees in any manner whatsoever; further specifically denying that this answering respondent, its agents, servants and employees, did thereby, or by any other act or conduct, engage in, or is presently engaging in, unfair labor practices under Section 8(a)(1) of the Act, or at all.

V.

Answering the allegations contained in paragraph IX, this answering respondent denies each and every, all and singular, the allegations therein contained; specifically denying that it committed any of the acts set forth in paragraph VII of Subdivisions A through C, inclusive, of said paragraph VII, or that any act or conduct on the part of this answering respondent, its agents and servants, had, or did have, a close, or intimate, or substantial, or any other effect in relationship to trade, or traffic, or commerce among the several states of the United States, or tended to lead to labor disputes, or in any other manner interfered with labor relations; further specifically denying that said alleged conduct burdened, or obstructed, commerce or the free flow of commerce, or in any other manner affected commerce.

VI.

Answering the allegations contained in paragraph

General Counsel's Exhibit No. 1-F—(Continued)
X, this answering respondent denies each and every, all and singular, the allegations therein contained; specifically denying that this answering respondent committed the acts alleged in said paragraph VII of said complaint or the acts alleged in paragraph VII, subdivisions A through C, inclusive, of said paragraph VII, or that said alleged acts, or any other acts, or conduct, constitute unfair labor practices within the meaning of Section 8(a)(1) or (3) or Section 2(6) or (7) of the Act, or any other division or subdivision of the Act, or that this answering respondent, its agents and servants, or employees or officers, are in violation of any provision of said Act.

Wherefore, this answering respondent prays that said Complaint be dismissed.

AVERY, MEUX & GALLAGHER,
DOTY, EVANS & QUINLAN,

/s/ By KENNETH G. AVERY,
Attorneys for Respondent.

Duly Verified.

Affidavit of Service by Mail Attached.

[Title of Board and Cause.]

INTERMEDIATE REPORT AND
RECOMMENDED ORDER

Statement of the Case

Upon a charge duly filed on December 9, 1957,
by International Longshoremen's and Warehouse-

men's Union, herein called the Union, the General Counsel of the National Labor Relations Board, herein respectively called the General Counsel¹ and the Board, by the Regional Director for the Twentieth Region (San Francisco, California), issued his complaint, dated February 14, 1958, against California Compress Company, Inc., herein called Respondent, alleging that Respondent had engaged in, and was engaging in, unfair labor practices affecting commerce within the meaning of Section 8(a)(1) and (3) and Section 2(6) and (7) of the National Labor Relations Act, as amended, 61 Stat. 136, herein called the Act.

Copies of the charge and complaint, together with notice of hearing thereon, were duly served upon Respondent and upon the Union.

Specifically, the complaint alleged that Respondent (1) on or about November 20, 1957, interrogated and questioned its employees regarding their Union activities and sympathies and warned and threatened them with loss of overtime, loss of earnings, and with discharge, if they joined, favored, or assisted the Union; (2) on or about December 6, 1957, circulated a document among its employees concerning their Union activities and sympathies and by coercion and threats induced certain of the employees to sign said document; and (3) on or about December 7, 1957, warned and threatened certain employees that if they had not signed the aforesaid affidavit they would have been discharged.

¹ This term specifically includes counsel for the General Counsel appearing at the hearing.

Respondent duly filed an answer denying the commission of the unfair labor practices alleged.

Pursuant to due notice, a hearing was held on March 18 and 19, 1958, at Fresno, California, before the undersigned, the duly designated Trial Examiner. All parties were represented by counsel and participated in the hearing and were afforded full opportunity to be heard, to examine and cross-examine witnesses, to introduce evidence relevant to the issues, to argue orally at the conclusion of the taking of the evidence, and to file briefs on or before April 10, 1958.² Briefs have been received from Respondent's counsel and from counsel for the charging party which have been carefully considered. Respondent's motion, made at the conclusion of the hearing and on which decision was reserved, to dismiss the complaint for lack of proof is disposed of in accordance with findings, conclusions, and recommendations set forth below.

Upon the entire record in the case and from his observation of the witnesses, the undersigned makes the following:

Findings of Fact

I. Respondent's business operations

California Compress Company, Inc., a California corporation, has its principal offices and place of business at Fresno, California, where it is engaged in the storage, handling, and processing of cotton. During 1956, Respondent stored, processed, and handled in excess of \$20,000,000 worth of cotton for

² At the request of Respondent's counsel the time to file briefs was extended to April 21, 1958.

its customers, of which approximately \$15,000,000 worth was shipped by such customers to points located outside the State of California. During the same year, Respondent received fees in excess of \$250,000 for services rendered to concerns having their principal places of business outside the State of California.

Upon the above undisputed facts, the undersigned finds that during all times material Respondent was, and now is, engaged in commerce within the meaning of Section 2 (6) and (7) of the Act and that it will effectuate the purposes of the Act for the Board to assert jurisdiction in this proceeding.

II. The labor organization involved

International Longshoremen's and Warehousemen's Union is a labor organization admitting to membership employees of Respondent.

III. The unfair labor practices

A. The pertinent facts

On November 6, 1957,³ the Union filed a petition with the Board in which it requested that it be certified as the bargaining representative for a unit composed of all Respondent's nonsupervisory production and maintenance employees. A copy of said petition was received by Respondent on November 7 or 8.

By mere coincidence, Jaul K. Doty, Esq., one of Respondent's counsel, happened to be in the Re-

³ Unless otherwise noted, all dates hereinafter mentioned refer to 1957.

gional Offices the day the aforementioned petition was filed. Upon being informed by one of the Board's Field Examiners of the filing of the petition, Doty inquired whether the Union had "made a sufficient showing of interest." The Field Examiner replied in the affirmative. Later that day, Doty telephoned from his San Francisco hotel to Winston Handwerker, Respondent's general manager who was in Fresno, and advised Handwerker of the filing of the petition and of the Union's apparent showing of sufficient interest to warrant processing the petition. Handwerker replied, to quote from Doty's credible testimony, "I don't believe there could be any union members or any applications signed, let alone a majority of our employees."⁴ Doty then said, "I had not discussed with the Board officials the authenticity of the cards or how current they were or anything along that line, but I would check with them."

The next work day, Doty went to the Board's offices and was informed by another Field Examiner that the authorization cards submitted by the Union "seemed to be current and that approximately 80

⁴ Handwerker testified that he based his doubts that the employees desired to be unionized upon the fact that in a Board-conducted election held in December 1956, the employees voted against being represented by International Chemical Workers Union, Local No. 97, and, for the further reason, "All of the information that I had available pointed to the fact that the employees were perfectly satisfied with their present setup, and that we had statements volunteered to us stating that the employees did not want a union."

percent of the 86 employees" of Respondent had signed such cards. According to Doty's credible testimony the following then ensued between him and the Field Examiner:

I asked him what the procedure was if these cards turned out to be not authentic. He said usually they would have the FBI check the signatures and compare those with signatures on cancelled pay checks. I asked [him] not to proceed further until I talked with the company, but perhaps that should be done * * *.

On or about the same day that Handwerker received the representation petition he informed Plant Superintendent Lawrence Young of its receipt and then asked Young "if any of our employees had signed cards or had asked for representation," to which inquiry Young replied that he was sure that none of the employees had. Handwerker then asked Young if he knew of any way he could ascertain whether the employees had signed Union cards, and Young replied, "All I [have] to do [is] ask the boys." Later in the day, Young, after talking to three or four of the employees, reported to Handwerker that he had been told "by some of the boys" that "no one had signed [union cards] or was interested in the Union."

Three or four days after Young had asked "some of the boys" about their Union affiliations, he entered the boiler or smoke room where some 40 or 50 employees had gathered during the afternoon rest period, and stated that he had information that about 50 employees had signed Union cards; that

he was going to ascertain who they were; that the men must be unhappy if they had signed Union cards; that if the employees were unhappy they should come to him with their "beefs" and he would attempt to correct the situation without any expense to the aggrieved employees; and that it was unnecessary for the employees to pay anyone to be their representative. Young also informed the employees on this occasion that if any of them were unhappy with their working conditions they should advise him and Respondent would gladly assist them in getting located elsewhere.

The same day Young addressed the men in the boiler room, he called into his private office Charles Kuhns, Henry Hayes, and Don Robinson, Respondent's three foremen, and, after stating that he had heard there were rumors going around the plant to the effect that the men had signed Union cards, requested the foremen to ascertain whether the men in fact had signed such cards or were in any way interested in unionization.

Hayes testified, and the undersigned finds, that pursuant to Young's request he asked the men in his crew whether they were "happy" and that each of them replied in the affirmative.⁵

Robinson testified, and the undersigned finds, that pursuant to Young's request he asked the men in his crew whether they were happy with their work and that later that day or the next day he informed

⁵ For reasons not disclosed by the record, this information was not relayed to Young.

Young that the men in his crew "seemed to be very happy."

Kuhns testified, and the undersigned finds, that directly after Young's aforementioned boiler room talk he called his crew into his office and stated

* * * I had been told that we received word that a good majority of the men had signed union cards to be represented by a union and that it was my belief, as well as Mr. Young's belief, that our men were satisfied with their work and they had not signed the cards. And if there was any [employee] that [was] not satisfied, we would like to know ourselves in order to correct what we were doing wrong, or help them out in any way we could.

Kuhns further testified, and the undersigned finds, that some of the men then stated that they had not signed union cards; and that later in the day he told Young, "All of my men seemed to be contented, and they didn't want a union."

Under date of November 21, the Acting Regional Director of the Twentieth Region, for and on behalf of the Board, served a notice upon the parties to the effect that a hearing would be held before a Hearing Examiner on December 10, to resolve the question raised by the Union's November 6 petition for representation of Respondent's nonsupervisory production and maintenance employees. A copy of said notice was received by Respondent on or about November 22.

Employee Benny Walls testified, and the undersigned finds, that in November, Young told a group of yard employees that if the Union successfully

organized the employees, "the block men will come out in the yard and take the jobs" of the yard men.

On December 4, Handwerker requested Young to ascertain from the foremen whether they saw any objection to the circulation among the employees of a document, herein called an affidavit, bearing the following legend:

The undersigned, each for himself, after first being sworn, deposes and says:

That he was on the 6th day of November, 1957, and is now, employed by California Compress Co., Inc., a corporation, at its cotton compressing plant at Nielsen Avenue and Marks Street, Fresno, California, and in such employment performs production and maintenance work; that he has not affixed his signature to any card or paper intending thereby, or being advised that such signature would be used, to support a claim of representation by International Longshoremen's & Warehousemen's Union, Independent, and that he has not knowingly signed any such document.⁶

The same day, December 4, Young called Kuhns, Robinson, and Hayes into his office and instructed Kuhns to circulate the affidavit among his crew and then to circulate it, in Robinson's presence,

⁶ Handwerker testified, "The information I was seeking [by the circulation of the affidavit] was for my own information. I wanted to know whether or not the men in our plant actually had signed cards, applications cards, for a union, and if they had signed them not knowing what they had signed, I wanted to know; and if they had not signed them, I wanted to know."

among the men under Robinson's supervision, and then in Hayes' presence, circulate it among the men in Hayes' crew. Young further instructed Kuhns to obtain the signatures to said affidavit of the men who had not signed Union cards and of those who actually had signed such cards but who stated that they did not know what they were signing at the time of the execution of the cards.

Kuhns thereupon went to his men and, after reading the affidavit to them, obtained the signatures of all of them except two who refused to sign because they had signed Union cards. He and Hayes then obtained the signatures of all of Hayes' crew, except one who signed with an "X". Kuhns, in Robinson's presence, then proceeded to obtain the signatures of the latter's crew. Because of the lateness of the hour, Kuhns and Robinson were unable to approach all of Robinson's men and thus were compelled to wait until the following morning to complete their task.

By about 10 o'clock on December 5, Kuhns had obtained the signatures of 82 employees of the 86 nonsupervisory personnel in Respondent's employ on November 6, the date of the filing of the representation petition.⁷

Employee Merritts, a member of Kuhns' crew, testified that when Kuhns approached him with the aforementioned document on December 4, Kuhns stated, to quote from Merritts' credible testimony,

⁷ Under date of December 10, Kuhns swore to the affidavit as a subscribing witness.

"All I want to know is if you did sign for the union, don't sign this list; if you didn't sign for the union, sign this list"; that when he advised Kuhns that he had "signed for the union," the latter remarked, "Well, that don't involve you then"; and that later in the day the following transpired, to again quote Merritts' credible testimony,

I met him (Kuhns) at his office * * * and he said to me, "If I were you, at your age,^s I would take my name off and tell them (the Union) I didn't know what I was signing." I said, "Well, I knew what I was signing." And he said, "Well, if I were you, at your age, I would take my name off and tell them I didn't know what I was signing." And I told him I knew what I was signing, and I said, "It don't make no difference to me."

According to the credited testimony of Employee Canty, the following transpired when Kuhns and Robinson discussed with him the aforementioned affidavit:

Q. And will you state the circumstances of your seeing it and what, if any, statements were made to you regarding the document, General Counsel's No. 2, by Mr. Kuhns?

A. Well, I went in the office. He called me in the office, and he had it in there.

Trial Examiner: Who is "he"?

The Witness: Charlie Kuhns. And he told me had a petition that he wanted to sign, and I asked him for what, and he said the fellows didn't want

^s Merritts was 64 years of age at the time of the hearing.

no union, and I told him I didn't want to sign it. And then Robinson said——

Q. (By Mr. Yeates): Is this Mr. Robinson your supervisor? A. Yes.

Q. All right. Go ahead.

A. He said, "If you haven't signed one of these union cards, sign then. But if you have signed one of these union cards, don't sign it." He said, "If you signed a union card and didn't know what you was signing, sign that." So I told him I didn't want to be involved either way.

So he said——

Trial Examiner: Who said this?

The Witness: Then Kuhns said, "Well, the majority signed it already." So he pointed out several names to me. I saw the name of Shirley Richardson, Bonnie Merritts. Those was the only two men that signed it that knew what they was signing.

Trial Examiner: Signed what?

The Witness: The union card. I said, "Well, if I didn't sign the union card, why should I sign that? I don't want to be in bad with the company and be in bad with the union. If the union has an election they can get back at me."

Then he said, "Well, there won't be no election." He said——

Trial Examiner: Who?

The Witness: Charlie Kuhns. He said, "Well, the best thing for you to do is sign this because there's not going to be no election. You have been with us a long time and we would hate to see you go." So I signed it.

Employee Reason testified, and the undersigned finds, that during a discussion he had with Young regarding the affidavit submitted to him by Kuhns and Robinson which, by the way, he signed reluctantly because he had previously signed a Union card, Young remarked that if he knew who had signed Union cards he would discharge every one of them.

According to the credited testimony of Employee Ross, he signed the affidavit only after Hayes had told him that he had not realized what he was doing when he signed a Union card.

Employee Williams testified, and the undersigned finds, that he signed the affidavit after Hayes had stated to him that Young wanted the employees to sign it.

Kenneth G. Avery, Esq., Respondent's general counsel, testified credibly that at a meeting held in Doty's offices on December 13, with the Field Examiner Doty first consulted about the Union's representation petition, he delivered to her the affidavit which the employees had signed on December 4 and 5, remarking,

* * * we had circulated this document for the purpose of producing evidence that the Board would consider as to the sufficiency of representation; that I wished to file the original of this document in the representation proceedings, and asked her if she was willing to accept the photostatic copy for her purposes in connection with the unfair labor charge hearing.

Avery further credibly testified that the Field Examiner accepted the document and commented, "Probably the best procedure was to submit payroll checks which the Board could then check against the union authorization cards to determine the authenticity of the signatures" appearing thereon; and that on December 17, he submitted payroll checks bearing the endorsements of the 86 employees on Respondent's payroll of November 8.

Under date of December 30, the Regional Director of the Twentieth Region wrote Avery as follows:

We have considered the allegations which you have made and the evidence which you have submitted relating to the validity of the showing made by the petitioner in the above-entitled case. From a consideration of such evidence, as well as from our own independent investigation, we are satisfied that there is no reasonable basis to find that the showing is not valid and, therefore, we conclude that the Union has made a valid showing sufficient to support its petition.

Although the charge against your client, filed in Case No. 20-CA-1366, is a separate proceeding, it is not wholly unrelated in some of its aspects. Our investigation of the charge case is not yet complete, but I feel that I should advise you that information presently at hand indicates the possibility that your instructions regarding the circulation of the petition in the instant case were not closely followed. We have some evidence which would indicate that supervisory personnel made coercive and unlawful state-

ments to employees during the course of circulating the petitions.

The charge has been assigned to Mr. Robert Yeates, attorney in this office, and he will communicate with you directly regarding it in the near future.

B. Concluding findings

The right of employees under Section 7 of the Act "to form, join or assist labor organizations, to bargain collectively through representatives of their own choosing * * * [and] to refrain from any or all of such activities" is effectively implemented by Section 8 (a) (1). This latter provision forbids an employer to "interfere with, restrain, or coerce employees in the exercise of the rights guaranteed in Section 7." The employer's economic hold over his employees, which inheres in their relationship, is thereby neutralized by the provisions of said sections in matters of organization and representation, which are peculiarly the concern of the employees. Interdiction against employer intrusion in such matters is essential if employees are to be free from the coercive influence of their employer, for employees are, as the courts have repeatedly and uniformly found, not insensitive to the advantages in their employment that they consider are likely to flow from their employer, nor the disadvantages which may attend their choice of representatives opposed by their employer. And for the same reason, employees cannot be expected to derive the full benefit from their protected right of self-organization and the selection of a repre-

sentative of their own choosing if they believe, from circumstances which their employer created or for which he was fairly responsible, that their representative, however chosen, is subject to the employer's approval or disapproval.

In open disregard of its duty of neutrality, Respondent, upon being advised by the Board that the Union had filed a petition seeking certification as the bargaining representative of its nonsupervisory production and maintenance employees and that approximately 80 percent of the employees had signed cards authorizing the Union to bargain collectively for them, embarked upon a campaign to wean the employees away from their chosen representative. The testimony upon which this finding is based rests mainly, but not solely, upon that of Respondent's managerial personnel and its other responsible representatives. Thus, it is admitted that the foreman, upon instructions from Young, queried the employees about their activities and sympathies for the Union. By such questioning, in the setting, the conditions, the methods, the incidents, as disclosed by the credited evidence, Respondent invaded an area guaranteed to be exclusively the concern of the employees, for inherent in the very nature of an employee's statutory right to organize is the accompanying right to privacy in its enjoyment, free from employer intermeddling or intrusion.⁹

⁹ N.L.R.B. v. Syracuse Color Press, Inc., 209 F. 2d 596 (C.A. 2); H. J. Heinz Co. v. N.L.R.B., 311 U.S. 514; N.L.R.B. v. Deena Products Company,

Respondent well knew, at the time it circulated the affidavit on December 4 and 5, that there existed a real question concerning the representation of certain of its employees for it had been advised by the Board of the filing of the representation petition and of the Union's showing of substantial interest. The Congress has clothed the Board with the exclusive power to investigate and determine representatives for the purposes of collective bargaining. In the exercise of this power, the Board usually makes such determination, after a proper hearing and at a proper time, by permitting employees freely to select their bargaining representative by secret ballot. In this case, however, Respondent elected to disregard the orderly procedure set up by the Board under the Act and arrogated to itself the resolution of the representation question.

Relying heavily on *Globe Iron Foundry*, 112 NLRB 1200, Respondent seeks to defend its circulation of the affidavit as a proper procedure to bring to the Board's attention its claim that the cards submitted by the Union to the Board were not signed by its employees or, in the alternative, if its employees, in fact, had signed the cards the

195 F. 2d 330 (C.A. 7); *N.L.R.B. v. Laister-Kaufman Aircraft Corp.*, 144 F. 2d 9 (C.A. 8); *N.L.R.B. v. Chautauqua Hardware Corp.*, 192 F. 2d 492 (C.A. 2); *N.L.R.B. v. Brezner Tanning Co.*, 141 F. 2d 62 (C.A. 1); *N.L.R.B. v. National Plastic Products Co.*, 175 F. 2d 755 (C.A. 4); *N.L.R.B. v. Valley Mould & Iron Corp.*, 116 F. 2d 760 (C.A. 7); *N.L.R.B. v. LaSalle Steel Co.*, 178 F. 2d 829 (C.A. 7).

employees were not aware of their purport. That case is distinguishable from the present one. Here, Respondent first interrogated its employees as to Union matters, then polled the employees as to their union affiliations and sympathies. Even though Respondent's purpose in the interrogation and the subsequent polling of the employees may have been intended, as Respondent contends, merely to bring to the Board's attention Respondent's doubts that its employees desired to be represented by the Union the interrogation and the subsequent polling, under all the circumstances here present, extended beyond the permissible limits of employer interrogation.¹⁰

Upon the entire record in the case, the undersigned is convinced, and finds, that by the interrogation of its employees, including the polling, Respondent violated Section 8 (a) (1) of the Act.

IV. The effect of the unfair labor practices upon commerce

The activities of Respondent, set forth in Section III above, occurring in connection with its operations, described in Section I above, have a close, intimate, and substantial relation to trade, traffic, and commerce among the several States, and such of them as have been found to constitute unfair labor practices, tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

¹⁰ Polling of employees regarding their union affiliations or sympathies, is akin to interrogation.

V. The remedy

Having found that Respondent has engaged in unfair labor practices, violative of Section 8 (a) (1) of the Act, it will be recommended that it cease and desist therefrom and take certain affirmative action designed to effectuate the policies of the Act.

Upon the basis of the foregoing findings of fact and upon the record as a whole, the undersigned makes the following:

Conclusions of Law

1. California Compress Company, Inc., Fresno, California, is engaged, and during all times material was engaged, in commerce within the meaning of Section 2 (6) and (7) of the Act.

2. International Longshoremen's and Warehousemen's Union is a labor organization within the meaning of Section 2 (5) of the Act.

3. By polling or interrogating its employees as to whether they desired to be represented by the Union, Respondent has engaged in, and is engaging in, unfair labor practices within the meaning of Section 8 (a) (1) of the Act.

4. The aforesaid unfair labor practices are unfair labor practices within the meaning of Section 2 (6) and (7) of the Act.

Recommendations

Upon the basis of the foregoing findings of fact and conclusions of law, and upon the record as a whole, the undersigned recommends that California Compress Company, Inc., Fresno, California, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Polling or interrogating its employees as to whether they desire to be represented by International Longshoremen's and Warehousemen's Union, or interrogating its employees in any other manner concerning their membership in, or other activities on behalf of that or any other labor organization, in any manner constituting interference, restraint, or coercion in violation of Section 8 (a) (1) of the Act;

(b) In any like or related manner interfering with, restraining, or coercing its employees in the exercise of the rights guaranteed in Section 7 of the Act.

2. Take the following affirmative action which the undersigned finds will effectuate the policies of the Act:

(a) Post at its plant in Fresno, California, copies of the notice attached hereto marked "Appendix A." Copies of said notice, to be furnished by the Regional Director for the Twentieth Region, shall, after being duly signed by Respondent's representative, be posted for sixty (60) consecutive days thereafter in conspicuous places, including all places where notices to employees customarily are posted. Reasonable steps shall be taken by Respondent to insure that said notices are not altered, defaced, or covered by any other material;

(b) Notify the Regional Director for the Twentieth Region, in writing, within twenty (20) days from the receipt of this Intermediate Report and

Recommended Order what steps Respondent has taken to comply therewith.

It is further recommended that unless within twenty (20) days from the date of the receipt of this Intermediate Report and Recommended Order the Respondent notifies said Regional Director that it will comply with the foregoing recommendations, the Board issue an order requiring Respondent to take the aforesaid action.

Dated this . . . day of May 1958.

/s/ HOWARD MYERS,
Trial Examiner.

APPENDIX "A"

Notice to All Employees: Pursuant to the Recommendations of a Trial Examiner of the National Labor Relations Board, and in order to effectuate the policies of the National Labor Relations Act, we hereby notify our employees that:

We Will Not poll or interrogate our employees as to whether they desire to be represented by International Longshoremen's and Warehousemen's Union, nor will we interrogate our employees in any manner concerning their membership in, or other activities on behalf of that or any other labor organization, in a manner constituting interference, restraint or coercion in violation of Section 8 (a) (1) of the Act.

We Will Not in any like or related manner inter-

fere with, restraint or coerce our employees in the exercise of the rights guaranteed in Section 7 of the Act.

California Compress Company, Inc.
(Employer)

Dated.....

By.....
(Representative) (Title)

This notice must remain posted for 60 days from the date hereof, and must not be altered, defaced, or covered by any other material.

United States of America
Before the National Labor Relations Board

Case No. 20-CA-1366

CALIFORNIA COMPRESS COMPANY, INC.
and INTERNATIONAL LONGSHORE-
MEN'S AND WAREHOUSEMEN'S UNION

DECISION AND ORDER

On May 5, 1958, Trial Examiner Howard Myers issued his Intermediate Report in the above-entitled proceeding, finding that the Respondent had engaged in and was engaging in certain unfair labor practices and recommending that it cease and desist therefrom and take certain affirmative action, as set forth in the copy of the Intermediate Report attached hereto. Thereafter, the Respondent filed exceptions to the Intermediate Report and a supporting brief.

Pursuant to the provisions of Section 3 (b) of the Act, the Board has delegated its powers in connection with this case to a three-member panel.

The Board has reviewed the rulings of the Trial Examiner made at the hearing and finds that no prejudicial error was committed. The rulings are hereby affirmed. The Board has considered the Intermediate Report, the exceptions and brief, and the entire record in the case, and hereby adopts the findings, conclusions, and recommendations of the Trial Examiner, as modified herein.

We agree with the Trial Examiner that the Respondent violated Section 8 (a) (1) of the Act.

In so concluding we note that the Employer's interrogation and polling of employees was accompanied in a number of instances, by threats of loss of employment if the Union were successful in its organizational campaign. Accordingly, we find that the purpose of the interrogation and polling in such context was to undermine the Union, and not, as Respondent contends, to gather evidence to assist the Board in determining the authenticity of the showing of interest made by the Union in its representation case. Under all the circumstances, the Employer's interrogation and polling constitute interference, restrain, and coercion within the meaning of Section 8 (a) (1) of the Act.¹

¹ Blue Flash Express, Inc., 109 NLRB 591, 593; Mid-South Manufacturing Co., Inc., 120 NLRB No. 39. In the absence of exceptions to the failure of

Order

Upon the entire record herein, and pursuant to Section 10 (c) of the National Labor Relations Act, as amended, the National Labor Relations Board hereby orders that the Respondent, California Compress Company, Inc., Fresno, California, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Interrogating or polling its employees regarding their union activities, affiliations, or sympathies in a manner constituting interference, restraint, or coercion in violation of Section 8 (a) (1) of the Act;

(b) In any like or related manner interfering with, restraining, or coercing its employees in the exercise of the rights guaranteed in Section 7 of the Act.

2. Take the following affirmative action which the Board finds will effectuate the policies of the Act:

(a) Post at its plant in Fresno, California, copies of the notice attached hereto marked "Appendix".²

the Trial Examiner to find the threats of loss of employment to be a violation of the Act, we will make no such finding herein.

² In the event that this Order is enforced by a decree of a United States Court of Appeals, the notice shall be amended by substituting for the words "Pursuant to a Decision and Order" the words "Pursuant to a Decree of the United States Court of Appeals, Enforcing an Order."

Copies of said notice to be furnished by the Regional Director for the Twentieth Region, shall, after being duly signed by Respondent's representative, be posted by the Respondent immediately upon receipt thereof and maintained by it for sixty (60) consecutive days thereafter in conspicuous places, including all places where notices to employees customarily are posted. Reasonable steps shall be taken by Respondent to insure that said notices are not altered, defaced, or covered by any other material;

(b) Notify the Regional Director for the Twentieth Region, in writing, within ten (10) days from the date of this Order, as to the steps the Respondent has taken to comply herewith.

It Is Further Ordered that the complaint be, and it hereby is, dismissed insofar as it alleges unfair labor practices not found to have been committed herein.

Dated: Washington, D. C., October 16, 1958.

BOYD LEEDOM, Chairman,
PHILIP RAY RODGERS, Member,
JOSEPH ALTON JENKINS,
Member,

[Seal] National Labor Relations Board.

APPENDIX

Notice to All Employees: Pursuant to a Decision and Order of the National Labor Relations Board, and in order to effectuate the policies of the National Labor Relations Act, as amended, we hereby notify our employees that:

We Will Not interrogate or poll our employees regarding their union activities, affiliations, or sympathies in a manner constituting interference, restraint, or coercion in violation of Section 8 (a) (1) of the Act.

We Will Not in any like or related manner interfere with, restrain, or coerce our employees in the exercise of the rights guaranteed in Section 7 of the Act.

California Compress Company, Inc.
(Employer)

Dated.....

By.....
(Representative) (Title)

This notice must remain posted for 60 days from the date hereof, and must not be altered, defaced, or covered by any other material.

United States Court of Appeals
For the Ninth Circuit

NATIONAL LABOR RELATIONS BOARD,
Petitioner,
vs.

CALIFORNIA COMPRESS COMPANY, INC.,
Respondent.

CERTIFICATE OF THE NATIONAL LABOR
RELATIONS BOARD

The National Labor Relations Board, by its Executive Secretary, duly authorized by Section 102.92, Rules and Regulations of the National Labor Relations Board—Series 7, hereby certifies that the documents annexed hereto constitute a full and accurate transcript of the entire record of a proceeding had before said Board and known upon its record as Case No. 20-CA-1366. Such transcript includes the pleadings and testimony and evidence upon which the order of the Board in said proceeding was entered, and includes also the findings and order of the Board.

Fully enumerated, said documents attached hereto are as follows:

1. Stenographic transcript of testimony taken before Trial Examiner Howard Myers on March 18 and 19, 1958, together with all exhibits introduced in evidence, also rejected exhibit.
2. Copy of Trial Examiner Howard Myers' In-

intermediate Report and Recommended Order dated May 5, 1958 (annexed to item 4 hereof).

3. Respondent's exceptions to the Intermediate Report received June 13, 1958.

4. Copy of Decision and Order issued by the National Labor Relations Board on October 16, 1958, with Intermediate Report attached thereto.

In Testimony Whereof, the Executive Secretary of the National Labor Relations Board, being thereunto duly authorized as aforesaid, has hereunto set his hand and affixed the seal of the National Labor Relations Board in the city of Washington, District of Columbia, this 12th day of May, 1959.

[Seal] /s/ FRANK M. KLEILER,
Executive Secretary, National
Labor Relations Board.

[Endorsed]: No. 16422. United States Court of Appeals for the Ninth Circuit. National Labor Relations Board, Petitioner, vs. California Compress Company, Inc., Respondent. Transcript of the Record. Petition to Enforce an Order of the National Labor Relations Board.

Filed: May 18, 1959.

/s/ PAUL P. O'BRIEN,
Clerk of the United States Court of Appeals for
the Ninth Circuit.

United States Court of Appeals
For the Ninth Circuit

No. 16422

NATIONAL LABOR RELATIONS BOARD,
Petitioner,

vs.

CALIFORNIA COMPRESS COMPANY, INC.,
Respondent.

PETITION FOR ENFORCEMENT OF AN OR-
DER OF THE NATIONAL LABOR RELA-
TIONS BOARD

To the Honorable, the Judges of the United States
Court of Appeals for the Ninth Circuit:

The National Labor Relations Board, pursuant to the National Labor Relations Act, as amended (61 Stat. 136, 29 U. S. C., Secs. 151, et seq., as amended by 72 Stat. 945), hereinafter called the Act, respectfully petitions this Court for the enforcement of its Order against Respondent, California Compress Company, Inc., Fresno, California, its officers, agents, successors, and assigns. The proceeding resulting in said Order is known upon the records of the Board as Case No. 20-CA-1366.

In support of this petition the Board respectfully shows:

(1) Respondent is a California corporation engaged in business in the State of California within

this judicial circuit where the unfair labor practices occurred. This Court therefore has jurisdiction of this petition by virtue of Section 10 (e) of the National Labor Relations Act, as amended.

(2) Upon due proceedings had before the Board in said matter, the Board in October 16, 1958, duly stated its findings of fact and conclusions of law, and issued an Order directed to the Respondent, its officers, agents, successors, and assigns. On the same date, the Board's Decision and Order was served upon Respondent by sending a copy thereof postpaid, bearing Government frank, by registered mail, to Respondent's counsel.

(3) Pursuant to Section 10 (e) of the National Labor Relations Act, as amended, the Board is certifying and filing with this Court a transcript of the entire record of the proceeding before the Board upon which the said Order was entered, which transcript includes the pleadings, testimony and evidence, findings of fact, conclusions of law, and the Order of the Board sought to be enforced.

Wherefore, the Board prays this Honorable Court that it cause notice of the filing of this petition and transcript to be served upon the Respondent and that this Court take jurisdiction of the proceeding and of the questions determined therein and make and enter upon the pleadings, testimony and evidence, and the proceedings set forth in the transcript and upon the Order made thereupon a decree enforcing in whole said Order of the Board

and requiring Respondent, its officers, agents, successors, and assigns to comply therewith.

Dated at Washington, D. C., this 2nd day of April, 1959.

/s/ THOMAS J. McDERMOTT,

Associate General Counsel, National
Labor Relations Board.

[Endorsed]: Filed April 6, 1959. Paul P. O'Brien,
Clerk.

[Title of Court of Appeals and Cause.]

ANSWER TO PETITION FOR ENFORCE-
MENT OF AN ORDER OF THE NA-
TIONAL LABOR RELATIONS BOARD

To the Honorable, the Judges of the United States
Court of Appeals for the Ninth Circuit:

Now comes the respondent in the above entitled
action.

The respondent, pursuant to the National Labor Relations Act, files this answer to petition for enforcement of the National Labor Relations Board order issued by the Board against respondent and requests that said order be set aside or modified and that the request for enforcement be denied.

I.

The respondent admits the allegations in paragraph 1 of petitioner's application for enforcement.

II.

Answering the allegations contained in paragraph 2 the respondent admits that the National Labor Relations Board (herein referred to as Board) made its findings of fact, conclusions of law, and order on October 16, 1958, directed to the respondent, its officers, agents, successors and assigns, and the service thereof, and, except as herein admitted, denies each and every, all and singular, the remaining allegations therein contained.

III.

The respondent, California Compress Company, Inc., in further answer to the petition filed herein by the Board for enforcement of its order entered in said proceeding of the Board known as 20-CA-1366 respectfully represents:

(a) That said order was entered by the Board on hearsay and inference, and respondent further respectfully submits that the order issued herein is not based upon the preponderance of proper and legal evidence and that the findings of fact and conclusions of law are contrary to the credible evidence when the entire record is considered. In this connection the respondent alleges that there is no substantial evidence in the record to sustain the findings that the respondent, its agents, servants or employees, violated Section 8(a)(1), or any other provision, of the National Labor Relations Act.

(b) That said Board's order is arbitrary and capricious, constitutes an abuse of discretion, and exceeds the powers vested in the Board.

(c) That said Board, despite respondent's exceptions to the intermediate report and recommended order, has failed and refused to find that respondent has not engaged in acts constituting unfair labor practices within the meaning of the National Labor Relations Act.

(d) That said order, unless vacated, will impose restraints upon respondent which are violative of the right of free speech guaranteed by the First Amendment of the United States Constitution and Section 8(c) of the Labor-Management Relations Act.

(e) That the respondent was denied due process of law by the Board and at the hearing of the charges brought by the Board, in that:

(1) The complaint and notice of hearing issued by the Board and served upon the respondent failed to set out concisely and failed to designate with particularity the acts or omissions alleged as unlawful and did fail to set forth the charges in such manner that persons of reasonable intelligence could ascertain the acts or omissions charged;

(2) The evidence adduced at the hearing which forms the basis of the decision of the Board was not responsive to the complaint and notice of hearing or the issues framed by the pleadings, which said evidence was received over objection and retained in the record over motion to strike; and that respondent by the complaint and notice of hearing had no knowledge of the acts or omissions charged and was not afforded by the complaint an

opportunity to defend itself against said acts or omissions which formed the basis of the award.

Wherefore, respondent prays that the Court make and enter its decree dismissing said proceedings.

AVERY, MEUX & GALLAGHER,
TOTY & QUINLAN,

/s/ By PAUL K. DOTY,
Attorneys for Respondent.

[Endorsed]: Filed April 25, 1959. Paul P. O'Brien, Clerk.

[Title of Court of Appeals and Cause.]

STATEMENT OF POINTS UPON WHICH
PETITIONER INTENDS TO RELY

In this proceeding, petitioner National Labor Relations Board will rely upon the following point:

Substantial evidence on the record considered as a whole supports the Board's conclusion that respondent interfered with, restrained, and coerced its employees in violation of Section 8 (a) (1) of the Act.

Dated at Washington, D. C., this 12th day of May, 1959.

/s/ MARCEL MALLET-PREVOST,
Assistant General Counsel, National
Labor Relations Board.

[Endorsed]: Filed May 15, 1959. Paul P. O'Brien, Clerk.

Before the National Labor Relations Board
Twentieth Region

Case No. 20-CA-1366

In the Matter of: California Compress Company,
Inc., and International Longshoremen's and
Warehousemen's Union.

TRANSCRIPT OF PROCEEDINGS

Room 210, City Hall, 2326 Fresno Street, Fresno,
California, Tuesday, March 18, 1958.

Pursuant to notice, the above-entitled matter
came on for hearing at 10:00 o'clock a.m.

Before: Howard Myers, Trial Examiner.

Appearances: Robert M. Yeates, 830 Market
Street, San Francisco, California, appearing on
behalf of the General Counsel, National Labor Re-
lations Board. Avery, Meux and Gallagher, by
Kenneth G. Avery, 605 Security Bank Building,
Fresno, California, appearing on behalf of Re-
spondent California Compress Co., Inc. Doty, Evans
& Quinlan, by Paul K. Doty, Suite 415 T. W. Pat-
terson Building, Fresno, California, appearing on
behalf of Respondent California Compress Co., Inc.
Gladstein, Anderson, Leonard & Sibbett, by Nor-
man Leonard, 240 Montgomery Street, San Fran-
cisco, California, appearing on behalf of the Charg-
ing Party, International Longshoremen's and Ware-
housemen's Union. [2]*

* * * * *

* Page numbers appearing at top of page of Reporter's Trans-
cript of Record.

Trial Examiner: Mr. Yeates, have you any motions addressed to the pleadings?

Mr. Yeates: Yes, I have. I would like to make a motion to amend paragraph 6 of the pleading to delete the name Charles Coons, spelled C-o-o-n-s, [8] inasmuch as the Charles Coons referred to is the same party referred to beforehand in the same paragraph as C. H. Kuhns. They are one and the same person.

Trial Examiner: Any objections, Gentlemen?

Mr. Doty: No objection.

Mr. Avery: No objection.

Trial Examiner: There being no objection, the motion is granted.

Have you any other motions?

Mr. Yeates: Yes. Also under section 102.20 I would like, under the Board's rules, that the following paragraphs of the complaint be admitted and deemed as true by the Trial Examiner for the reason that the answer has failed to deny the application. The paragraphs referred to are 1, 2, 3, 4, 5 and 6 as amended.

Trial Examiner: Any objection?

Mr. Doty: No objection.

Mr. Avery: No objection.

Trial Examiner: The motion is granted without an objection.

Any other objections, Mr. Yeates? [9]

Mr. Yeates: No, sir. [10]

* * * * *

Mr. Avery: Mr. Trial Examiner, may I also call your attention to paragraph "b" of paragraph

7—subsection “b” of paragraph 7 in which the name Charles Coons also appears. I don’t know whether General Counsel had meant to amend by striking the name from that paragraph also.

Trial Examiner: Well, is Coons, C-o-o-n-s, and [11] Charles Kuhns, K-u-h-n-s, one and the same person?

Mr. Avery: There is no Charles C-o-o-n-s.

Mr. Yeates: Yes. The name Charles Coons, C-o-o-n-s, in that paragraph should be stricken to conform with paragraph 6.

Trial Examiner: Any objection?

Mr. Doty: No objection.

Mr. Avery: No objection.

Trial Examiner: There being no objection, the motion is granted.

Are there any other motions, gentlemen, at this time?

(No response.)

* * * * *

ABRAHAM CANTY

a witness called by and on behalf of the General Counsel, being first duly sworn, was examined and testified as follows:

Direct Examination

Trial Examiner: What is your name, sir?

The Witness: Abraham Canty.

Trial Examiner: How do you spell your last name?

The Witness: C-a-n-t-y.

Trial Examiner: And where do you live? [12]

(Testimony of Abraham Canty.)

The Witness: 226 West Chandler.

Trial Examiner: Fresno?

The Witness: Fresno.

* * * * *

Q. (By Mr. Yeates): What is your present employment? A. California Compress.

Q. How long have you worked there?

A. About since 1951.

* * * * *

Q. Who is the supervisor over you?

A. Don Robinson. [13]

* * * * *

Q. Mr. Canty, have you ever been present at the company when any of the supervisors of the company who you know as supervisors by name made any statements to you or to other employees concerning union activities of the employees? [14]

A. I have.

Q. Do you recall when the first incident of any such statement took place?

A. The first time was when Mr. Young came in the smoke room.

Q. What date was that, or what month, if you know?

A. That was around November sometime. I don't know the day or the date.

Q. In what year was that? Was that last year?

A. 1957. No, let's see. No, that was this year. It was in November.

Q. 1957? A. That's right.

(Testimony of Abraham Canty.)

Trial Examiner: What is Mr. Young's first name?

The Witness: Larry.

Q. (By Mr. Yeates): Is that Lawrence Young?

A. Larry.

Q. You know him as Larry Young?

A. Yes, sir.

Q. What time of day was this?

A. Three o'clock smoke period.

Q. And where were you at the time?

A. In the smoke room.

Q. What statements, if any, did he make to the employees at that time?

A. Well, when he came in, he said, "I heard you guys wanted a union." [15] And he wanted to know what the union could do for us that we wasn't already getting. No one said a word.

And so he said, "If any of you fellows got any beef, come to me and talk to me." He said, "I won't charge you nothing." He said, "Why do you want to get someone to represent you and pay them?"

No one still said nothing. And when he got ready to leave, he said, "Is everybody happy?" And nobody said nothing.

And he said, "If any of you guys have any beef whatever, you come to me and I will be glad to talk it over with you at any time."

Trial Examiner: How many employees were there at that time?

The Witness: Oh, about forty or fifty.

(Testimony of Abraham Canty.)

Trial Examiner: And what was Mr. Young's job at that time, as far as you know?

The Witness: Superintendent.

Q. (By Mr. Yeates): Were any further statements made by Mr. Young to you at that time?

A. No.

Q. Was there any reference to signature cards by the employees?

A. Well, he said, "There was some fifty guys that signed up with the union." And at that time there was only fifty-eight men on the payroll and some fifty had signed cards, and he said he would find out who they were. [16]

Q. Where were you from Mr. Young at that time? How far from Mr. Young were you when he made that statement?

A. Well, about from me to where you are.

Trial Examiner: About how far is that?

The Witness: About two yards.

Q. (By Mr. Yeates): You would say about twelve feet or so, ten feet?

A. Something like that.

Q. That is what I would estimate my distance from you is.

A. Yes, sir.

Q. Were any further statements made by Mr. Young to the employees at that time that you know of?

A. Not that I know of.

Mr. Yeates: Could I have this marked for identification, please, as General Counsel's 2. [17]

* * * * *

Q. (By Mr. Yeates): Mr. Canty, I am going

(Testimony of Abraham Canty.)

to hand you what has been marked for identification as General Counsel's Exhibit 2 and ask you to look at this document, which is a photostatic copy of the original, and see if you have ever seen such a document before.

A. I have seen this before.

Q. And where did you see this document the first time?

A. This is the document Mr. Kuhns had.

Q. Mr. Kuhns? A. Yes.

Q. And will you state the circumstances of your seeing it and what, if any, statements were made to you regarding the document, General Counsel's No. 2, by Mr. Kuhns?

A. Well, I went in the office. He called me in the office, and he had it in there.

Trial Examiner: Who is "he"?

The Witness: Charlie Kuhns. And he told me he had a petition that he wanted to sign, and I asked him for what, and he said the fellows didn't want no union, and I told him I didn't want to sign it. And then Robinson said——

Q. (By Mr. Yeates): Is this Mr. Robinson your supervisor? A. Yes.

Q. All right. Go ahead.

A. He said, "If you haven't signed one of these union cards, [18] sign then. But if you have signed one of these union cards, don't sign it." He said, "If you signed a union card and didn't know what you was signing, sign that." So I told him I didn't want to be involved either way.

(Testimony of Abraham Canty.)

So he said——

Trial Examiner: Who said this?

The Witness: Then Kuhns said, "Well, the majority signed it already." So he pointed out several names to me. I saw the name of Shirley Richardson, Bonnie Merritts. Those was the only two men that signed it that knew what they was signing.

Trial Examiner: Signed what?

The Witness: The union card. I said, "Well, if I didn't sign the union card, why should I sign that? I don't want to be in bad with the company and be in bad with the union. If the union has an election, they can get back at me."

Then he said, "Well, there won't be no election." He said——

Trial Examiner: Who?

The Witness: Charlie Kuhns. He said, "Well, the best thing for you to do is sign this because there's not going to be no election. You have been with us a long time and we would hate to see you go." So I signed it.

Q. (By Mr. Yeates): Who made that statement to you? A. Charlie Kuhns.

Trial Examiner: Who was there besides you and Mr. Kuhns and Mr. Robinson? [19]

The Witness: Well, several more came in. Let me see. Benny Walls was one of them. I don't recall all of them that came in.

Q. (By Mr. Yeates): Did he make any reference to the company?

Trial Examiner: Who is "he"?

(Testimony of Abraham Canty.)

Q. (By Mr. Yeates): Mr. Kuhns or Mr. Robinson, did they make any reference to your position with the company if you signed or did not sign the document in question?

A. Well, Charlie Kuhns said if I didn't sign it, I would be in bad with the company. That was all, and so I signed it.

Q. And you then signed General Counsel's proposed Exhibit No. 2? A. Yes. [20]

* * * * *

Q. All right. Now, after you signed the General Counsel's Exhibit No. 2, was anything else said to you by either Mr. Kuhns or Mr. Robinson?

A. No.

Mr. Yeates: Will you mark this 3-A.

* * * * *

Q. (By Mr. Yeates): I am going to hand you what has been marked General Counsel's Exhibit No. 3-A for identification, and I will ask you to look at this, which is stated to be an application of the International Longshoremen's and Warehousemen's Union, and there is a signature appearing on there of Abraham Canty, dated 8/12/57, and I will ask you if you can identify that signature. A. Yes.

Q. And the date? A. Yes.

Q. Now, is this signature appearing on this General Counsel's 3-A your signature? [21]

A. My signature.

Q. And the date of 8/12/57? A. Yes.

Q. Do you know by whom the date was affixed?

(Testimony of Abraham Canty.)

A. No, I don't know about the date. I can't recall the date. I don't remember the date.

Q. Well, do you know whether or not you put the date there yourself, or did the person before whom you signed it in front of put the date there?

A. Well, I don't remember.

Trial Examiner: Well, do you remember when you signed it?

The Witness: Yes, I remember when I signed it.

Trial Examiner: When?

The Witness: That was in September.

Trial Examiner: Of what year?

The Witness: 1957.

Q. (By Mr. Yeates): And did you know what you were signing at the time you signed this card?

A. The application for the union.

Q. And did you know what the purpose of the card was for? A. Yes, to get a union.

Q. And was that your intention when you signed the card? A. Yes, that's right.

Q. Now, in your testimony, Mr. Canty, did you tell us whether or not you had read this document before you signed it? [22]

A. No, I didn't read it.

Trial Examiner: What document are you referring to?

Mr. Yeates: I am referring to General Counsel's Exhibit No. 2.

The Witness: That I did not read.

Q. (By Mr. Yeates): You did not read it?

A. No, sir.

(Testimony of Abraham Canty.)

Q. Did you understand the purpose of this document, General Counsel's Exhibit No. 2?

A. Well, I didn't understand it. He said——

Trial Examiner: Who is "he"?

The Witness: Mr. Kuhns. He said that would be the papers from San Francisco; the men that didn't want a union. [23]

* * * * *

DEAMOUR REASON

a witness called by and on behalf of the General Counsel, being first duly sworn, was examined and testified as follows:

Direct Examination

Trial Examiner: What is your name?

The Witness: Deamour Reason.

Trial Examiner: And where do you live?

The Witness: I live at 2236 Holly.

Trial Examiner: In Fresno?

The Witness: Fresno, California. [33]

* * * * *

Q. (By Mr. Yeates): Mr. Reason, were you ever approached by anybody from the company with the document which has been marked in evidence as General Counsel's Exhibit No. 2?

A. Sure I was approached with that.

Q. Where were you at the time?

A. Well, I was—I went in the office. They asked for me to come in there and sign a card, sign this petition, and I told them "Yes." [35]

Q. Excuse me just a minute.

(Testimony of Deamour Reason.)

Do you remember on or about what date that was?

A. No, not exactly the date.

Q. What month?

A. In December somewhere.

* * * * *

Q. (By Mr. Yeates): Will you state what was said to you by Mr. Robinson at that time?

A. Well, he told me that he had a list there for me to sign, and he said, "If you sign this list, we want you to understand what you are doing." And so I didn't sign it. I went on back to work, to tell you the truth. I just went right on back to work. And then Mr. Young came down.

Q. And is this Plant Superintendent Young?

A. Yes. And he asked me did I sign the list he had in there, [36] and I told him, "No, I didn't sign it."

So he says, "Well, pretty near all the boys have signed."

I said, "Well, I know some of them haven't signed your list." I thought Benny hadn't signed it.

He said, "Benny already signed it."

Q. Is this Benny Walls? A. Yes.

Q. Is that W-a-l-l-s, Benny Walls?

A. That's right. He said, "I will get the list and let you look it over and you can see who all has signed it."

And I asked him, "Well, if I don't sign this list, will it cost me my job?"

And Mr. Young said, "Well, what I want to

(Testimony of Deamour Reason.)

know is the men that signed this union card." He said, "If I knew who they were, I would fire every one of them." [37]

* * * * *

Redirect Examination

Q. (By Mr. Yeates): Mr. Reason, you stated in your testimony that Mr. Young made a statement referring to those who had signed cards.

A. Sure.

Q. Now, in your testimony earlier you made a statement, during my examination, that he made a statement about those who signed this, if he knew, signed this document; is that right?

A. Yes. He said he would get rid of every one of them.

Q. And did he make that conversation at the same time with you? A. That's right. [62]

* * * * *

BENNY WALLS

a witness called by and on behalf of the General Counsel, being first duly sworn, was examined and testified as follows:

Direct Examination

Trial Examiner: What is your name?

The Witness: Benny Walls.

Trial Examiner: What?

The Witness: Benny Walls.

Trial Examiner: How do you spell your name?

The Witness: B-e-n-n-y W-a-l-l-s.

Trial Examiner: Where do you live?

(Testimony of Benny Walls.)

The Witness: 2334 South Fruit Street.

Trial Examiner: Fresno?

The Witness: Fresno. [69]

* * * * *

Trial Examiner: Are you a lift truck operator?

The Witness: Yes, sir, machine operator.

Q. (By Mr. Yeates): That is the same as a lift operator? A. Yes, sir.

Q. Were you ever around when any supervisor for the company talked to any employees of the company concerning the union? A. Yes.

Q. In your work, Mr. Walls, does it take you into the yard?

A. Well, I'm all over, to tell you the truth.

Q. Well, in your work, what was the first time, if any, statements were made to you concerning the union?

A. Well, I heard Mr. Young talk to some of the boys.

Q. And by "some of the boys," who do you mean?

A. Well, it was Willie and James Mayfield. We was all out there in front. And he made remarks saying if we go union, that the block men will come out in the yard and take the jobs [71] there, and we will have to go home.

Q. Was anything further said?

A. Well, he said he knowed that the boys didn't want to go home or stuff like that, so the boys came and asked me——

Q. Wait a minute. Where was this statement

(Testimony of Benny Walls.)

made? A. Right in the yard there.

Q. And do you remember when this was made, what month? A. November.

Q. What time of day, if you know?

A. Something after nine.

Trial Examiner: What year?

The Witness: 1957.

Q. (By Mr. Yeates): November of 1957?

A. Yes.

Q. And you say this was out in the yard?

A. Yes. [72]

* * * * *

Q. How many were present at the time this statement was made?

A. Well, I seen about five or ten.

Q. And what was his statement to the employees then?

A. Well, he told the yard bunch that if they go union, the block bunch would come out and take the jobs, and they would have to go home, and they knowed they didn't want that kind of stuff.

* * * * *

Q. (By Mr. Yeates): I will show it to you and ask you whether you have ever seen the original of General Counsel's Exhibit No. 2, this being a photo-static copy. A. Yes.

Q. You have seen it? A. Yes, sir.

Q. Who first showed that document to you?

A. Mr. Kuhns.

Q. Mr. Kuhns? A. Yes, sir. [73]

Q. One of the supervisors? A. Yes, sir.

(Testimony of Benny Walls.)

Q. What, if anything, did he say to you at the time he presented the document to you?

A. Well, we was coming from the lunchroom, me and Abraham, and so——

Trial Examiner: Now wait a minute. In the first place, you and Abraham. Who is Abraham?

The Witness: Abraham Canty.

Trial Examiner: All right.

A. (Continuing): I was walking back from the lunchroom, me and Abraham was.

Trial Examiner: When was this?

The Witness: That was right after 1:00 o'clock.

Trial Examiner: I mean what day?

The Witness: December or—I don't know. Sometime in December.

Trial Examiner: Had you signed that?

The Witness: Yes.

Trial Examiner: You and Canty were walking back from the lunchroom?

The Witness: Yes. And Mr. Kuhns joined us as we was going back.

Trial Examiner: No, go ahead. Don't say "he." Mention them by name. [74]

A. (Continuing): So Mr. Kuhns asked me whether I read or signed a paper, and I said, "What paper?"

And he said, "This petition."

And so I said, "I don't think I signed it. All the rest of the boys signed it."

He said, "Well, you better sign it and get it over with."

(Testimony of Benny Walls.)

I said, "Well, I will see you after while."

So I went in the door and when I left, I told Kuhns, "I will see you," and so I went on out.

So I seen Kuhns with the list that the boys signed, and I was called in again about 3:30 and Kuhns was still in there.

Q. (By Mr. Yeates): Was this in the office?

A. Yes, sir. Kuhns was still in the office. And so he asked me, "Are you still ready to sign it?"

I said, "Wait until all of them sign it and then I will sign it." I said, "I don't know what I am signing." I said, "It may mess me up."

He said, "Oh, no, it won't."

I said, "Well, I will sign it before I go home." So I went out, and I didn't have no more work until I got ready to go home. I came in about 4:50 or something like that; he said, "This is your last chance."

And I said, "Well, I think I will sign it now."

And he said, "Well, you better sign it."

And so I signed it, and I went right on home. It was right after 5:00. [75]

Q. After you signed the document, did anybody from the company make any statements to you?

A. Yes.

* * * * *

A. The next morning I went in the office to get my next lot of cotton, and Larry Young met me.

Q. Is this the plant superintendent?

A. Yes.

Q. All right. Go ahead.

(Testimony of Benny Walls.)

A. He said, "I heard you and Kuhns had an argument about signing the petition."

I said, "Yes, we had, but I signed it."

He said, "Well, if you was the number one man, you would sign it."

So I signed it. [76]

* * * * *

Q. (By Mr. Yeates): This marked General Counsel's Exhibit No. 4 for identification. I am going to hand you this and then ask you a question about it. It is an application for the International Longshoremen's and Warehousemen's Union. There appears on there the date of 8/6/57 and a signature at the bottom which states "Benny Walls." Is that your signature? A. Yes, sir.

Q. And was it dated the same day you signed it?

A. Yes, sir.

Q. You recall that? A. Yes, sir.

Q. Do you know what the nature of this General Counsel's No. 4 was when you signed it, this application?

A. When I signed it, I knowed what I was signing because I wanted a union, and I signed it.

* * * * *

Q. (By Mr. Yeates): When you signed the petition, had you then, in fact, already signed a union application card? A. Yes, sir.

Q. Why did you then affix your signature to the petition?

A. Well, I just seen the rest of them sign it, and I just fell in line.

(Testimony of Benny Walls.)

Q. What, if anything, had been explained to you about this petition and by whom?

A. Well, nobody explained nothing to me. I didn't even read it. I just asked questions about it, and he figured the union was putting something over on him, and they wanted us to sign it. But I waited until close to 5:00 o'clock before I signed it. I asked him how many signed it.

He said, "Well, about twenty more men would sign in the morning."

So I said, "Well, I will sign mine now."

Q. At the time you signed this, you knew you had signed a union card? A. Yes, sir.

Q. Could you state why you affixed your signature to the petition? A. This?

Q. Yes.

A. Well, I was kind of scared. I had to.

Q. You say "scared." What do you mean by "scared"? [78]

A. I didn't want to lose that bread.

Q. When you say "bread"—

Trial Examiner: Now, wait a minute.

A. Well, I didn't want to get laid off. I figured if I didn't sign it, I would get laid off. That's why I signed it.

* * * * *

Cross-Examination

Q. (By Mr. Avery): Mr. Walls, did anyone tell you before you signed Exhibit No. 2 that you would be laid off if you didn't sign it? A. No.

Q. Now, Mr. Walls, the next day after you had

(Testimony of Benny Walls.)

signed this document, you had a conversation with Mr. Lawrence Young, the superintendent; is that correct? A. That's right.

Q. Tell me, what time of day was it that you spoke to him?

A. It was just a little after 8:00 in the morning.

Q. Just a little after 8:00 in the morning?

A. Yes.

Q. Now, this is the next day after you signed?

A. That's right. [79]

Q. Now, where was it?

A. We was just about fifteen feet out of the office when I met Mr. Young coming into the office.

Q. What were you doing at that time?

A. I was taking another sheet of paper out to get my next lot.

Q. Was anybody else present when Mr. Young talked to you?

A. Not at the time I was going out.

Q. That is the time Mr. Young made the statement to you? A. That's right.

Q. If you hadn't signed it before, he would have fired you; is that right? A. That's right.

* * * * *

Q. Were you present at a time when Mr. Young was talking to Mr. Deamour Reason?

A. Well, I was close by.

Q. You were close by? A. Yes.

Q. What time of day was that?

A. I don't know exactly. I don't recall exactly what time it was, [80] but I was right close by

(Testimony of Benny Walls.)

when Mr. Young was talking to Deamour Reason, because I always like to get up and hear everything. And so I signed because he was kind of mad at me for signing it. [81]

* * * * *

Q. (By Mr. Avery): What did you hear Mr. Young say to Mr. Reason, and what did you hear Mr. Reason say to Mr. Young at approximately nine o'clock on that day?

A. I couldn't hear everything, but I heard the discussion, you know. I could hear Mr. Young say to Mr. Reason——

Trial Examiner: You just tell us what you remember.

Q. (By Mr. Avery): Just tell us what you remember.

A. I heard him say that if he knowed the men that signed the petition, that he would lay them off.

Trial Examiner: The petition or the application?

The Witness: The application. But I wasn't close enough to hear everything.

Q. (By Mr. Avery): You heard that, though?

A. Yes.

Q. You are sure of that? A. Yes, sir.

Q. Now, Mr. Walls, are you afraid or frightened of Mr. Reason?

A. No. He was just talking to me.

Q. But you are frightened of the union?

A. What? [82]

Q. You are frightened about the union?

(Testimony of Benny Walls.)

A. Well——

Q. Aren't you afraid they will do something to you unless you testify this way today?

A. No.

Q. You told one of the supervisors you were frightened of the union?

A. No. I couldn't be frightened because I want the union?

Q. You want the union? A. Yes.

Q. Did you ever tell one of the supervisors that you were frightened of the union? A. No.

Q. That you were afraid of being beaten up unless you testified this way today? A. No.

Q. You are sure you didn't tell them that?

A. No, I'm not afraid of the union because I was one of the main ones who wanted a union.

Q. Isn't it true that you told one of the supervisors that you were afraid of the union?

A. No, I am not afraid of the union. [83]

* * * * *

Q. Now, Mr. Walls, were you present at a meeting in a boiler room or a smoke room sometime in November of 1957 when Mr. Young talked to all of the men? A. I was.

Q. Now, was that on the same day that you were telling us about when you were out in the yard and there were five to ten men present?

A. No.

Q. That was on a different time? A. Yes.

Q. How many days apart were these two meetings? A. Well, I couldn't recall.

(Testimony of Benny Walls.)

Trial Examiner: About. Which came first?

The Witness: Talking in the smoke room was last.

Q. (By Mr. Avery): That was the last thing that happened? A. Yes.

Q. All right. So this meeting in the yard that you had was some days prior to the meeting in the smoke room? A. That's right.

Q. Is that correct?

A. That's correct. [85]

* * * * *

Q. Now, tell me what you did hear in the boiler room or smoke house.

A. Well, I heard that in the boiler room he said if he knowed the ones that signed it, you know—I don't know exactly what all he did say.

Q. The words you are trying to say, I presume, Mr. Walls, are that if he could find out the men that signed the cards, he was going to fire them? That is what you intended to say, isn't it?

A. No.

Q. It was not? A. No. [86]

Q. You tell me what you intended to say.

A. Well, it was in the boiler room, but he did say if the men wasn't satisfied, why, he could help them to another job.

Q. If the men weren't satisfied, he would help them to another job? A. Yes.

* * * * *

Q. Now, at this conversation in the yard several days before the meeting in the smoke house,

(Testimony of Benny Walls.)

as I understand it, Mr. Young said something like this: "If the plant goes union, the yard boys will have to go home because the block boys will take over their jobs"; is that approximately it?

A. That's right. The block boys will come out and take the jobs, and they don't want that kind of stuff because they will have to go home.

Q. Did you understand what he meant by that?

A. Yes.

Q. What did he mean by that? [87]

A. He meant if we all went union and if they vote for the union and lose it or win it, that means they will go home. The block boys will come out there in the yard and take over.

Q. Did Mr. Young at that time state where he had heard that you were trying to go union, or did he mention that he heard you were going union?

A. He talked to me several times about he heard the boys trying to go union, but I told him they didn't want to go union, but I knowed all the time they did. [88]

* * * * *

BONNIE MERRITTS

a witness called by and on behalf of the General Counsel, being first duly sworn, was examined and testified as follows:

Direct Examination

Trial Examiner: What is your full name, sir?

The Witness: Bonnie Merritts.

Trial Examiner: Will you spell that for the reporter, please?

(Testimony of Bonnie Merritts.)

The Witness: B-o-n-n-i-e M-e-r-r-i-t-t-s.

Trial Examiner: And where do you live, sir?

The Witness: 105 Stanislaus, Fresno.

* * * * *

Q. (By Mr. Yeates): What is your employment at the present time?

A. Well, I am not working at the present time. I was laid off on the 4th of March at the California Compress Company.

Q. How long did you work at California Compress?

A. Well, ever since the California Compress has been there, except last fall when I didn't work on account of sickness. [119]

Q. Did anybody from the company approach you with a petition which we have introduced in evidence as General Counsel's Exhibit No. 2 and a copy of which is before you? A. Yes.

Q. Who approached you on that?

A. Mr. Kuhns.

Q. What statements did he make to you in reference to the document?

A. Well, he came up and said—wait a minute. He said, "I got something I want to tell you all or show you all." He had a list of printed names on it; actually a whole bunch of names. He held the list out.

And I said, "Where did this list come from?"

He said, "It was made up in the office."

I said, "Well, that's fine."

He said, "All I want to know is if you did sign

(Testimony of Bonnie Merritts.)

for the union, don't sign this list; if you didn't sign for the union, sign this list."

I said, "Well, I signed for the union."

He said, "Well, that don't involve you, then."

That's all there was to that.

Q. After that time did anybody again speak to you about the petition? A. Yes.

Q. Who was that? [120]

A. Mr. Kuhns. I met him at his office the same day. I met him at the door, and he said to me, "If I were you, at your age, I would take my name off and tell them I didn't know what I was signing."

I said, "Well, I knew what I was signing."

And he said, "Well, if I were you, at your age, I would take my name off and tell them I didn't know what I was signing."

And I told him I knew what I was signing, and I said, "It don't make no difference to me."

And that's all there was to that.

Q. Did that end the conversation?

A. That ended the conversation.

Q. How old are you?

A. I will be sixty-five next month. I mean the first of May. [121]

* * * * *

Redirect Examination

Q. (By Mr. Yeates): When in reference to the conversation you had in Mr. Kuhns' office after he had first approached you with the paper you said

(Testimony of Bonnie Merritts.)

you noted did he—would you state again what he said to you at that time?

A. Well, all I can remember definitely is that he said—he was telling the samplers, “If you get a union, the block crew is liable to come out here and take your job when the work is slack for the block men.”

And one of the samplers, Frank Lopez, said, “Well, we are supposed to be cotton cutters. How are they going to take our job?”

And he said, “Well, they got some cutters in there and don’t think they can’t come in here and do your work.”

Q. Who was that statement made by?

A. Mr. Kuhns.

Q. And where was that statement made?

A. In his office.

Q. Now, you have stated earlier that Mr. Kuhns stated to you something about changing your mind because of your age?

A. Yes.

Q. What statement did he make to you at that time?

A. He said, “If I were you, I would go down and have my name taken off because of your age and tell them you didn’t know [127] what you were signing.”

And I told him I knew what I was signing and that it didn’t make any difference to me.

Trial Examiner: Taken off what?

The Witness: Off that list that was being signed for the union.

(Testimony of Bonnie Merritts.)

Q. (By Mr. Yeates): And this was at a different time? A. Yes.

* * * * *

WILLIE D. ROSS

a witness called by and on behalf of the General Counsel, being [128] first duly sworn, was examined and testified as follows:

Direct Examination

Trial Examiner: Will you state your full name?

The Witness: Willie D. Ross.

Trial Examiner: Willie, how do you spell that?

The Witness: W-i-l-l-i-e.

Trial Examiner: And Ross?

The Witness: R-o-s-s.

Trial Examiner: And where do you live?

The Witness: 1751 E Street, Fresno.

* * * * *

Q. (By Mr. Yeates): You were employed at California Compress in 1957? A. Yes, sir.

* * * * *

Q. (By Mr. Yeates): And the petition in front of you, the photostatic copy there, were you approached by somebody from the company concerning that document? A. Yes, I was.

Q. Do you recall about when that was? [129]

A. I think it was a little before noon on the 6th of December.

Q. And who approached you with the document?

A. Well, there was my supervisor, Mr. Hayes, and Mr. Charlie Kuhns.

(Testimony of Willie D. Ross.)

Q. The document I refer to is——

Trial Examiner: Did you say Hayes?

The Witness: Yes.

Trial Examiner: How do you spell that?

Mr. Yeates: H-a-y-e-s, I believe.

Q. (By Mr. Yeates): What statement, if any, did Mr. Hayes make to you about the document in question?

A. Well, he said, "I want you to sign this paper."

And I asked him what it was, and he said, "Well, you don't have time to read it." He said, "I will explain it to you." So he went on to explain it. He said, did I sign a card for the union. And so I said, "Well, I signed a paper." I said, "What does this paper concern?"

Mr. Charlie Kuhns said, "It's whether you are for the union or not."

I said, "Well, regardless of whether we go union or not, I am here to do a job and that's what I'm going to do." And then Mr. Hayes went on and explained to me that it was said that I didn't know what I was signing when I signed it. He explained it to me like that.

Trial Examiner: He said you didn't know what you were [130] signing?

The Witness: That I didn't know what I was signing the paper, the paper for the union, so I went on and signed the paper.

Q. (By Mr. Yeates): And after that, you signed the paper? A. That's right.

(Testimony of Willie D. Ross.)

Trial Examiner: And what job you say Hayes has?

The Witness: He supervises the field.

Q. (By Mr. Yeates): I will show you what is marked for identification General Counsel's Exhibit No. 6, which is an application for the union in question, and I will ask you if this is your signature?

A. That's right.

* * * * *

Q. (By Mr. Yeates): And the date, 10/22/57, do you know whether or not that was on the card when you signed it? A. Well——

Q. Was that the date when you signed the card?

A. No, I don't think I signed it on that date, but I know that's about when I signed the card, in October.

Q. That would be about the time you signed it?

A. That's right.

Q. Now, when you signed this, did you know what purpose this [131] card was for?

A. Yes.

Q. What was your understanding?

A. I knew it was to get the union in.

Q. What was your reason for signing the affidavit here?

A. Well, I figured it would be a threat to my job if I didn't sign it.

* * * * *

Cross Examination

Q. (By Mr. Avery): Mr. Ross, Mr. Hayes had

(Testimony of Willie D. Ross.)

this original of Exhibit No. 2 with him, didn't he, when he asked you to sign it?

A. Yes. This is the same paper because I knew there was about seven in front of me when I signed the paper, seven names.

Q. You remember that document?

A. Yes, sir.

Q. Did you read it before you signed it?

A. No, I didn't.

Q. Are you able to read? A. That's right.

Q. Now, did Mr. Hayes, when he explained what the document was, say that if you sign this, that what you are saying is that you didn't know what you were signing at the time you signed the union authorization card, which is General Counsel's Exhibit [132] No.—

Trial Examiner: 6.

* * * * *

The Witness: That's right.

Q. (By Mr. Avery): Now, you knew when you signed this document that you were, in effect, saying you didn't know what you were doing when you signed this card; is that right? A. Yes.

Q. Now, did you tell Mr. Hayes that you didn't know what you were signing when you signed this authorization card? A. No, I didn't tell him.

Q. But you signed your name after he told you that is what you were signing?

A. That's right.

Q. Now, in other words, what you were signing

(Testimony of Willie D. Ross.)

was an untrue statement; now, why did you do that?

A. Because I figured it was a threat to my job.

Q. You figured it was a threat to your job?

A. Yes. [133]

* * * * *

Mr. Yeates: Yes. On this petition, which has now been marked General Counsel's 7-A, B and C, it shows the date filed as 11/6/57. 7-B is the notice and the service of this document, and I will ask the Respondent if he will stipulate that they did receive a copy of this.

Mr. Avery: Let me see the copy that you are referring to.

Mr. Yeates: What I am referring to is the notice of representation hearing.

Mr. Avery: Counsel, we haven't been able to ascertain yet whether we did receive it or not, and we are trying to check.

Mr. Leonard: May I say on the record, Mr. Trial Examiner, that after we filed the petition on November 6, 1957, and on the same date—on the next day, November 7, 1957, there was the usual formal letter that we received from the Petitioners' office saying who the investigating officer would be and that we would be contacted. I assume a similar letter under the date of November 6, 1957, went to the employers as well.

Mr. Yeates: Does the employer have a copy of that letter?

Mr. Doty: We have a copy of the forms, but not the letter, for some reason or other. [139]

Trial Examiner: Well, will you stipulate, that is, after you find your files, that on or about November 12 or 13—I say November 12 or 13 because November 11 was a holiday, Armistice Day, that you received a copy of the petition in the representation case?

Mr. Doty: Oh, yes, we will stipulate that we received a copy of the petition.

Trial Examiner: On or about those dates?

Mr. Avery: Yes.

Trial Examiner: Now, did you get a copy of the notice of hearing?

Mr. Doty: Yes.

Trial Examiner: On or about what date? What is the date of the notice of hearing?

Mr. Doty: On or about the 22nd, I would assume.

Mr. Yeates: The 21st of March.

Trial Examiner: The 21st of what?

Mr. Yeates: The 21st of November is the date for the notice of hearing.

Mr. Avery: We will stipulate we received it in the course of mail in the usual number of days after it was dated.

Trial Examiner: That you received the notice of hearing in the representation case, that is to say, Case No. 20-RC-3427, in the usual course of the mail on the 22nd of November, 1957, or within a day or two? [140]

Mr. Doty: On or about.

Mr. Avery: On or about, yes. I am not sure whether the 22nd was a holiday or not.

Trial Examiner: I know, and that the notice set the hearing down for December 10, 1957; is that right?

Mr. Avery: Yes.

Trial Examiner: Do you gentlemen stipulate to all the facts that the Respondent has stipulated to?

Mr. Yeates: I will stipulate.

Trial Examiner: With respect to the time and the service and the receipt of the copy of the petition and the notice of the hearing?

Mr. Yeates: That is correct.

Trial Examiner: How about you, Mr. Leonard?

Mr. Leonard: Yes, sir. And on behalf of the Charging Party, we also received those notices as indicated.

* * * * *

LLOYD WILLIAMS

a witness called by and on behalf of the General Counsel, being first duly sworn, was examined and testified as follows:

Direct Examination

Trial Examiner: What is your full name, sir?

The Witness: Lloyd Williams. [141]

Trial Examiner: Will you kindly spell your name for the reporter?

The Witness: L-l-o-y-d W-i-l-l-i-a-m-s.

Trial Examiner: And where do you live, sir?

The Witness: 204 West Amador.

Trial Examiner: Fresno?

(Testimony of Lloyd Williams.)

The Witness: Yes, sir.

* * * * *

Q. (By Mr. Yeates): Were you employed at the California Compress Company in 1957, during 1957? A. Yes, sir.

Q. And during the period which is in question here, October, November and December of 1957, were you employed there?

A. What was that question?

Q. Were you employed in October, November and December of 1957 at the company?

A. Yes.

* * * * *

Q. And you have heard the prior testimony in the courtroom concerning a meeting in the smoke room in which Mr. Young made statements to certain employees? A. I did. [142]

Q. Were you present at the time that meeting took place? A. Yes, I was there.

Q. Will you state what, if any, remarks were made by Mr. Young that you heard?

A. Well, I heard him ask the men how many of them wanted a union, and none of them answered, and then he said he knew that about fifty men had signed up for the union, but he didn't know who they were.

And he said, "If you aren't happy on the job you have, well, I can fix it up for you." He would see to it that you got a job personally. He stated that he was paying us and not the union.

Q. Now, was there any statement made in ref-

(Testimony of Lloyd Williams.)

erence to cards signed or the number of employees signing cards?

A. Yes. He said he knew about fifty men had signed up for the union, but he didn't know who they were.

* * * * *

Q. (By Mr. Yeates): This is the original of General Counsel's Exhibit No. 2. I will hand this to you and ask you if you have ever seen this affidavit or document before. [143] A. Yes.

Q. Who handed it to you?

A. Henry Hayes.

Q. Did he make any statement at the time he handed it to you?

A. No. He just said it was something that Larry wanted us to sign, and he said we didn't have anything to worry about.

Q. When he said "Larry," did you know who he was referring to?

A. Superintendent Larry Young.

Q. Did you then sign the document?

A. Yes, I signed it.

* * * * *

Q. (By Mr. Yeates): I will hand this to you. It is a union application card, with the signature of Lloyd Williams on the bottom, and I will ask you if this is your signature. A. Yes, sir.

* * * * * [144]

Q. (By Mr. Yeates): There is a date appearing at the top of this, 10/21/57. Was the date on

(Testimony of Lloyd Williams.)

the card at the time you signed, or do you know by whom it was affixed, put on there by?

A. Well——

Q. Was this about the time you signed the card?

A. It was sometime in November or October when I signed the card.

Q. Sometime in November or October when you signed the card? A. Yes.

Q. Did you know the purpose of the card when you signed it? A. Yes.

Q. And what was the purpose?

A. For the union.

Q. Did you read the petition in question?

A. No.

Q. Did anybody read it to you? A. No.

Q. Did you know what the contents of the petition were—— A. No.

Q. (Continuing) ——At the time you signed your name to it?

A. No, I didn't know what it was for.

Mr. Yeates: That's all.

Mr. Leonard: May I ask a question or two?

Trial Examiner: Surely.

Q. (By Mr. Leonard): Mr. Williams, if I understand it, Mr. Hayes brought that petition to you, Exhibit No. 2? [145] A. Yes.

Q. And he is your immediate supervisor?

A. Yes.

Q. And he said that Larry wanted you to sign it? A. Yes.

Q. And Larry is the plant superintendent?

(Testimony of Lloyd Williams.)

A. Yes.

Q. In the years you have been working at this company, has Mr. Hayes or any other plant supervisor brought you a document and told you that the company wanted you to sign it? A. No.

* * * * * [146]

WINSTON HANDWERKER

a witness called by and on behalf of the Respondent, being first duly sworn, was examined and testified as follows:

Direct Examination

Trial Examiner: What is your name, sir?

The Witness: Winston Handwerker.

Trial Examiner: Will you spell that, please?

The Witness: W-i-n-s-t-o-n H-a-n-d-w-e-r-k-e-r.

Trial Examiner: And where do you live, sir?

The Witness: 910 Pico, Fresno. [153]

* * * * *

Q. (By Mr. Avery): Mr. Handwerker, are you in any way connected with California Compress Company, Inc., the Respondent in this matter?

A. Yes, I am.

Q. What is your position with the company?

A. General Manager.

Q. How long have you been employed by California Compress Company, Inc.?

A. Six years.

Q. Prior to its being incorporated, were you also with that company while it was a partnership?

A. That's right.

(Testimony of Winston Handwerker.)

Q. And six years embraces both the partnership and the incorporation? A. That's right.

Q. Now, Mr. Handwerker, did you receive in the course of the mail the documents which are General Counsel's Exhibit No. 7? A. Yes, I did.

Q. Referring to the first of those documents in date, the petition dated the 6th, did you in the course of the mail shortly after November 6, 1957, receive that petition? A. Yes, I did. [154]

Q. What did you do upon receiving that petition?

A. I called Paul Doty, if I remember correctly, to advise him that we had received this petition.

Q. Who is Paul Doty?

A. An attorney associated with the firm of Doty, Evans & Quinlan, I believe.

Trial Examiner: You mean the company's attorney?

The Witness: He is——

Trial Examiner: One of them?

The Witness: Yes, one of our attorneys.

Q. (By Mr. Avery): And where were you able to contact Mr. Doty?

A. As I remember, he was in San Francisco at the time.

Q. What was the purpose of your calling Mr. Doty?

A. The purpose was to ask Paul if it was possible to ascertain whether or not these signature cards were forgeries, inasmuch as I doubted seri-

(Testimony of Winston Handwerker.)

ously if a sufficient percentage of the employees had signed cards requesting a union.

Q. Requesting a union? A. That's right.

* * * * *

Q. (By Mr. Avery): Now, the signature cards you refer to are the signature cards that Mr. Doty had informed you were the basis for the statement in the petition that there was an adequate representation, that the union did have a sufficient number [155] of employees to represent it?

A. That's right.

* * * * *

Q. (By Mr. Avery): Now, you didn't believe it could be possible that there was any such number of your employees who wished to join the union?

A. I did not.

* * * * *

Q. (By Mr. Avery): Mr. Doty informed you that he had the information that there were signature cards signed by approximately 80 percent of your employees at that time?

A. That's correct.

Trial Examiner: Well, now, wait. You called Mr. Doty in San Francisco——

The Witness: Yes. [156]

Trial Examiner: ——when you received this petition?

The Witness: Yes.

Trial Examiner: And you told him you received this petition?

The Witness: Yes.

(Testimony of Winston Handwerker.)

Trial Examiner: And he told you all this at the same time?

The Witness: Not at the same time.

Trial Examiner: Did he call you back?

The Witness: He called me back.

Trial Examiner: All right.

The Witness: I asked him——

Trial Examiner: To ascertain what the situation was?

The Witness: That is correct; he called me back and gave me these facts.

Trial Examiner: All right. And he was still in San Francisco?

The Witness: That is correct.

Trial Examiner: Did he tell you that he talked with someone from the National Labor Relations Board?

The Witness: He said he talked with someone in the National Labor Relations Board who could verify these statements.

Trial Examiner: All right. I just wanted to clear up this thing for you.

Q. (By Mr. Avery): Now, why didn't you believe that was possible, the information that Mr. Doty advised you of?

A. Well, number one, in December of 1956—I think it was [157] December—we had had an election, or sometime in 1956 prior to December we had an election, and the employees had voted against a union.

Trial Examiner: Well, that was another union?

(Testimony of Winston Handwerker.)

The Witness: It was another union, but nevertheless they had voted against a union, and it was my information that the employees were not desirous of having a union at that time.

Trial Examiner: Well, may I ask this question of the witness, Counsel: Was that a National Labor Relations Board hearing?

The Witness: Yes, it was.

Mr. Avery: I was about to state—I don't want to encumber the record. I just want to state to the Trial Examiner that that was Case No. 20-RC-3174, which records will be available to the Trial Examiner.

Trial Examiner: What was the union in that case?

Mr. Avery: The union in that case was the International Chemical Workers Union, Local No. 97, AFL-CIO. [158]

* * * * *

Q. (By Mr. Avery): Now, what were your other reasons in addition to the fact that this election determined that these employees did not want this particular union?

Mr. Leonard: In December 1956.

A. From December 1956 up until the time that I received this petition, all that information—all of the information that I had available pointed to the fact that the employees were perfectly satisfied with their present setup, and that we had had statements volunteered to us stating that the employees did not want a union.

(Testimony of Winston Handwerker.)

Q. (By Mr. Avery): Yes. Now, with that background, did you consult subsequently to this phone call to Mr. Doty, Mr. Doty and myself, as to the procedure that could be employed by the California Compress Company, Inc., to verify your belief? A. Yes, I did.

Q. I show you, Mr. Handwerker, a document which now bears signatures and which is the original of General Counsel's Exhibit No. 2 and ask you if I presented you with that document, unsigned of course? A. Yes, you did. [159]

* * * * *

Q. (By Mr. Avery): And did I give you instructions regarding its circulation?

A. Yes, you did.

Q. Now, based upon the advice of Counsel and those instructions, what did you do with that document and why did you do it?

A. The first thing I did was to call Lawrence Young, the plant superintendent, into my office. I showed him the document and I had him read the document, and when he had finished, I explained to him exactly what it meant and asked him if he would meet with the foremen, the plant supervisors under his direction, and explain the document to them and ask them if they could see any reason why the men would object to his circularizing this document. [160]

* * * * *

Cross Examination

Q. (By Mr. Leonard): Mr. Handwerker, as I

(Testimony of Winston Handwerker.)

understand it, you first received the petition for representation filed by the ILWU on or shortly after November 7, 1957; is that right?

A. Approximately.

Q. And as soon as you received it, you called Mr. Doty who was in San Francisco? A. Yes.

Q. You asked Mr. Doty if it were possible to ascertain whether or not the signature cards were forgeries? Is that what you asked him to do?

A. I told Mr. Doty that I was astounded to receive such a petition and thought, frankly, that I—frankly, I doubted that enough cards had been signed by employees to justify the issuance of a petition.

Q. And what did Mr. Doty tell you when you told him that?

A. He stated that in his opinion they must have—the National Labor Relations Board must have had enough cards to authorize the issuance of this petition, at which time I stated, that being the case, I would like to investigate the possibility of checking the signatures on the cards, because I doubted that they were authentic.

Q. Did Mr. Doty tell you anything in response to that?

A. He said he would check and see what the proper procedure [168] would be.

Q. And then did you have some further communication with him? A. On what date?

Q. At any later time. A. Oh, yes.

(Testimony of Winston Handwerker.)

Q. And when did Mr. Doty call you? Was it the same day or the following day?

A. I think it was the following day.

Q. Did he tell you that he checked with the National Labor Relations Board?

A. He said he checked and that there were cards on file indicating that approximately 80 percent of our employees had signed these cards.

Q. Did he say anything further to you?

A. Not that I recall.

Q. Didn't Mr. Doty tell you that it was the policy of the National Labor Relations Board that such matters as you were asking him to inquire into were administrative matters and that the determination of representation was to be by secret ballot election? Didn't Mr. Doty tell you that in substance or effect, if not in my own words?

A. What was that again, please?

Trial Examiner: Will the reporter kindly read the question?

(Question read.)

A. Mr. Doty did not tell me that. [169]

Q. (By Mr. Leonard): He did not?

A. No.

Q. Did he tell you anything like that?

A. Well, I knew if there was an election to be held that it would be supervised by the National Labor Relations Board and that it would be a secret ballot.

Q. Because your company had gone through at least one prior election?

(Testimony of Winston Handwerker.)

A. That would be one way of finding out.

Q. You knew generally from your experience, then? A. Yes.

Q. When the Chemical Workers filed a petition back in 1956, Mr. Handwerker, did you cause to be circulated a document such as General Counsel's Exhibit No. 2 at that time? A. No.

Q. This is the first time in the history of your company you have done anything like this; isn't that right? A. That is correct.

Q. Mr. Handwerker, you stated in response to a question by your counsel that you did not believe your employees signed these cards; is that right?

A. That's right.

Q. And I think you stated there were two reasons for your disbelief on this point: One, in December of 1956, a year earlier, the employees voted against the Chemical Workers Union; [170] is that right? A. Yes.

Q. And the second reason was that you said it was your information the employees were not desirous of having a union; is that right?

A. Yes.

Q. Where did you get that information?

A. I make it a policy to try to know what is going on at all times.

Q. Where did you get that information?

A. I got that information from my superintendent.

Q. Do you have a policy of having your superintendent report to you about elections?

(Testimony of Winston Handwerker.)

A. The policy of the California Compress Company is to know at all times what our foremen, our supervisors, our employees—to know whether they are content.

Q. Is it the policy of the California Compress Company to know at all times what the employees' desires are with respect to unions?

A. If they want to volunteer that information, we have to listen to it.

Q. I appreciate that. Is it the policy of the company, if the employee wants to volunteer it—

A. If they want to volunteer it, we are happy to listen to it. That is the policy of the company.

Q. And if they do not volunteer it, how do you get the information?

A. We wouldn't be able to get the information.

Q. And which of your employees advised you that the other employees were not desirous having an election?

A. I think you heard Mr. Walls say that the men did not want a union. That is the only man I know.

Q. That is the only man you know?

A. Yes.

Q. Was it on the basis of the statement of Mr. Walls that is in the record that you formed your conclusion that the employees were not desirous of having a union?

A. No.

Q. On what other basis did you form your conclusion?

A. On the information I received from the su-

(Testimony of Winston Handwerker.)

perintendent and the opinion of the supervisors that the men did not want a union.

Q. And your superintendent—that's Mr. Young?

A. That's right.

Q. Did he tell you the source of his information? A. No, he didn't.

Q. Did any of the other supervisors tell you the source of their information? A. No.

Q. They simply gave it to you as their opinion or conclusion [172] that the men didn't want a union, and you simply took that?

A. That is right.

Q. Without probing any further?

A. That is correct.

Q. Did you discuss with Mr. Doty or Mr. Avery early in November or the middle part of November right after the petition—the representation was filed, whether you should dispose of that representation case by having a consent election, agreeing to an election? Was that the consideration at one time?

A. Will you read the question, please?

Trial Examiner: Read the question, please, Mr. Reporter.

(Question read.)

A. Right after Exhibit 2 was circularized, we considered having the election. As a matter of fact, we consented to it.

Trial Examiner: You mean that is after November 4th or 5th?

The Witness: No.

(Testimony of Winston Handwerker.)

Trial Examiner: I mean December 4th or 5th?

The Witness: That is correct. On approximately the 7th or the 8th is when we consented to it. [173]

* * * * *

Q. (By Mr. Leonard): Mr. Handwerker, do you recall whether Mr. Avery was first called in on this matter before or after the National Labor Relations Board issued its notice of hearing?

Trial Examiner: In what case?

Q. (By Mr. Leonard): In the representation case.

A. What was the date of the notice of hearing?

Q. The date of the notice of hearing is November 21. I assume it was received on November 20th.

A. I don't recall the exact date he was called in.

Q. Was it about that time?

A. I could ascertain the date, but I don't recall.

Trial Examiner: Have you got any papers in the hearing room?

The Witness: Have you got any?

Mr. Avery: Yes.

Mr. Leonard: I will be very happy to stipulate with you, Counsel, if you will tell us what the fact is.

Mr. Avery: Yes. I can quote from it in affidavit form. [175]

Trial Examiner: What date was that?

Mr. Leonard: I don't have a copy of it.

Mr. Avery: It was on or about November 27, 1957, that I was first called into the matter by Mr. Handwerker.

* * * * *

(Testimony of Winston Handwerker.)

Q. (By Mr. Leonard): When Mr. Avery was called in this matter, you discussed with him, did you not, that there was an election coming up because the Labor Board had ordered a hearing?

A. I discussed with him the petition that I had received.

Q. Did you tell him there was a hearing set for December 10th?

A. I don't recall that I told him there was a hearing set for December 10th. I didn't tell him that.

Trial Examiner: What did you tell him?

The Witness: I told him that I received the petition.

Trial Examiner: Is that all?

The Witness: And I probably sent him a copy of it.

Q. (By Mr. Leonard): You retained Mr. Avery to represent you [176] as your legal counsel in this matter; is that correct? A. That is correct.

Q. Did you tell your legal counsel that you received a notice from the National Labor Relations Board that there was going to be a hearing on December 10th?

A. I don't recall that I mentioned the date to him.

Q. I see. Did you tell him that the National Labor Relations Board had ordered a hearing?

A. I told him I received a petition for an election.

(Testimony of Winston Handwerker.)

Q. Did you tell him that the National Labor Relations Board had ordered a hearing?

A. I don't recall.

Q. So you called Mr. Avery into the case to be your counsel, but you didn't tell him there was a hearing coming up in about two weeks?

A. I told him there was a hearing on an election.

Trial Examiner: Now, you received that two weeks before. What did you tell him when you retained him on November 27?

The Witness: I don't recall the exact conversation, but I am sure I told him that we had—that the union claimed representation and that I doubted the authenticity of the signature cards, if they had them on file. They evidently had them on file in the National Labor Relations Board office in San Francisco, but I just could not believe——

Trial Examiner: Did you tell him that the matter was [177] coming up for a hearing?

The Witness: I don't recall.

Trial Examiner: Did you send him all the papers you received from the Board?

The Witness: I am sure I did.

* * * * *

Q. (By Mr. Leonard): Did you discuss with Mr. Avery or Mr. Doty the fact that if these signature cards were forgeries or if the employees [178] really didn't want a union, they could vote against the union in a secret ballot election?

A. Did I discuss that with Mr. Avery?

Q. Or Mr. Doty.

(Testimony of Winston Handwerker.)

A. No, I don't recall discussing that with them.

Q. Did you discuss with Mr. Avery or Mr. Doty the possibility of doing something to stop the election?

A. No.

Q. Or to stop the hearing?

A. I don't know what you mean by trying to stop it.

Q. To prevent the hearing from going forward.

A. I merely discussed with them the fact that I doubted that these cars were authentic.

Q. And you doubted that your employees wanted the union; isn't that correct?

A. That is correct.

Q. Did either Mr. Doty or Mr. Avery suggest to you that if that was your state of mind, the way to find out was to proceed with a Labor Board election?

A. No.

Q. Did you suggest it to them?

A. No.

Q. So prior to the time that General Counsel's Exhibit No. 2 was circulated, there was no consideration given by you or Mr. Avery or Mr. Doty to possibly having a consent election by [179] secret ballot so the employees could vote?

A. I did not decide to do so.

Q. However, it is true, is it not, Mr. Handwerker, that after that document, General Counsel's Exhibit No. 2, was circulated and all those signatures were obtained, that then you called the National Labor Relations Board and said you would consent to an election; is that right?

(Testimony of Winston Handwerker.)

A. We consented. I am not sure whether it was by telephone or not.

Q. Whether it was by a telephone call or by a letter, or——

Trial Examiner: You communicated with them?

The Witness: Yes.

Q. (By Mr. Leonard): And you did so after General Counsel's Exhibit No. 2 had been circulated by your supervisory personnel and had been signed by your employees; is that correct?

A. That is correct. [180]

* * * * *

PAUL K. DOTY

a witness called by and on behalf of the Respondent, being first duly sworn, was examined and testified as follows:

Direct Examination

Trial Examiner: What is your name, sir?

The Witness: Paul K. Doty.

Trial Examiner: And where do you live, sir?

The Witness: 1736 West Dayton Avenue, Fresno, California.

* * * * *

Q. (By Mr. Avery): What is your occupation, Mr. Doty? A. I am an attorney. [186]

Q. And how long have you been practicing as an attorney? A. Four years.

Q. Do you specialize in any particular branch of the law?

A. Yes. I specialize in labor laws.

Q. And in that specialization, Mr. Doty, have

(Testimony of Paul K. Doty.)

you been representing California Compress Co., Inc., for some years? A. I have.

Trial Examiner: How many years have you been practicing?

The Witness: Four.

Trial Examiner: Forty?

The Witness: Four, f-o-u-r.

Trial Examiner: Four?

The Witness: Yes.

Q. (By Mr. Avery): Mr. Doty, when did you first hear of the petition for representative allegation being filed with respect to production and maintenance employees of the California Compress Co., Inc.? A. On November 6th.

Q. And will you tell us the story from then on, what your connection with the affair was?

A. On November 6th I was at the National Labor Relations Board offices in connection with some other matters, and I was advised by Field Examiner Shirley Bingham that a petition had been filed by the ILWU in this matter.

I inquired whether or not they made a sufficient showing [187] of interest at that time, and she told me they had.

Upon my return to the hotel, I received word at my office that Mr. Handwerker was calling. I called Mr. Handwerker and notified him of the petition and also stated to him that there appeared to be a sufficient showing of interest.

His replies to me were in substance:

"I don't believe there could be any union mem-

(Testimony of Paul K. Doty.)

bers here or any applications signed, let alone a majority of our employees.”

I told him I had not discussed with the Board officials the authenticity of the cards or how current they were or anything along that line, but I would check with them the following Monday, I believe. I was remaining in San Francisco. I would check to see what the status was.

At that time I discussed with Albert Schneider—Miss Bingham was out of town—the cards. He stated they seemed to be current and that approximately 80 percent of the 86 employees—I advised him that there were 86 employees—that approximately 80 percent had signed authorization cards.

I asked him what the procedure was if these cards turned out to be not authentic. He said usually they would have the FBI check the signatures and compare those with signatures on cancelled pay checks.

I asked not to proceed further until I talked with the company, but perhaps that should be done, and then I returned to Fresno. [188]

The next conversation, I think, was—well, there may have been conversations between. I don't remember. I remember on the 29th Mr. Avery contacted me, Mr. Avery of the law firm of Avery, Meux and Gallagher, he being the company's general counsel, and we discussed the matter of these authorization cards.

We discussed particularly the Globe Iron case and decided to discuss with the company the pos-

(Testimony of Paul K. Doty.)

sibility of circularizing a petition and using the language of that particular case.

And the next thing I heard, this had been done. Shortly thereafter I was advised by Mr. Avery that we could consent to an election; that they felt they might as well proceed. I was in San Francisco the following day and discussed the matter with Mr. Yeates, and Mr. Yeates said it was too late; that they had already filed an unfair labor practice charge.

That is all.

Trial Examiner: Now, Mr. Yeates told you that an unfair labor practice charge was on file and they would not proceed with the election?

The Witness: That's correct.

Trial Examiner: He told you that was the Board's policy?

The Witness: That's right. [189]

* * * * *

Cross Examination

Q. (By Mr. Yeates): Mr. Doty, you are aware that a determination of the showing of interest on an election is an administrative matter; is that correct? [190] A. I am.

Q. And that the Board, in determining whether there is a timely showing, finds that out in their own process and then from that point determines whether to proceed with the election or hearing?

A. I would say in the absence of any forgeries or anything like that, that would be true.

Q. In your past practice with the Board, has it

(Testimony of Paul K. Doty.)

always been an administrative matter on the showing of interest, as far as you know?

Trial Examiner: Have you ever, in your experience prior to this time, called to the Board's attention that the authorization cards were forgeries or not authentic or not signed by the persons whose names appeared thereon?

The Witness: Never in my experience have I had any opportunity to doubt the cards.

Trial Examiner: Well, you say you have been practicing four years.

The Witness: I was an industrial labor consultant for fifteen or sixteen years prior to that.

* * * * *

Q. (By Mr. Leonard): Mr. Doty, with respect to General Counsel's [191] Exhibit No. 2, was that, to your knowledge, ever presented to the National Labor Relations Board?

A. Was this ever presented to the National Labor Relations Board?

Q. Yes.

Trial Examiner: Or a copy of it.

Q. (By Mr. Leonard): Or a copy of it.

A. Yes.

Q. Where? A. After the charges were filed.

Q. After the charges were filed? A. Yes.

Q. All right. Now, you stated that on or about the 10th of December you were in the Board's office and you saw Mr. Yeates, and he told you it was too late to go ahead with a consent election because the

(Testimony of Paul K. Doty.)

charges had been filed? Do you recall that testimony? A. Yes.

Q. It is also true, is it not, Mr. Doty, that sometime thereafter I called you on the telephone on behalf of the ILWU and offered to withdraw the charges if the company consented to an election; is that not correct?

A. Well, that is partially correct, I would say.

Q. Well, in what respect is it incorrect?

A. Well, we didn't feel we had a full complement of employees [192] at that time, and I didn't know the company's policy, but you did phone me to see if this matter could be settled.

Q. The fact is that sometime in December, before the first of the year of 1957, December of 1957, I called you and said the union would withdraw these charges if we could have a consent election, and you told me you would let me know; isn't that right?

A. I think that's right. I don't know the date.

Q. Well, that is true? A. Yes.

Q. And then you told me that that couldn't be done? A. That's right.

* * * * *

KENNETH G. AVERY

a witness called by and on behalf of the Respondent, being first duly sworn, was examined and testified as follows:

(Testimony of Kenneth G. Avery.)

Direct Examination

Trial Examiner: What is your name?

The Witness: Kenneth G. Avery, 4064 Wishon,
Fresno, California. * * * * * [193]

Mr. Doty: I will ask a few questions of Mr.
Avery.

Trial Examiner: Very well, sir. [194]

* * * * *

Q. (By Mr. Doty): Mr. Avery, shortly after
the unfair labor practice charge was filed, was there
a meeting held in the offices of Doty, Evans and
Quinlan, with the Field Examiner Miss Shirley
Bingham?

A. Yes, after the charge had been filed. [203]

* * * * *

Q. (By Mr. Doty): Was the General Counsel's
Exhibit No. 2 a topic of discussion at this meeting?

A. Yes, General Counsel's Exhibit No. 2 was one
of the photostatic copies of the document which
had been circulated on December 4th and 5th, which
I had prepared for the purpose of delivering to
Miss Bingham at this meeting.

Q. What was stated in that document at that
time? [204]

* * * * *

A. Concerning that document, I told Miss Bing-
ham that we had circulated this document for the
purpose of producing evidence that the Board could
consider as to the sufficiency of representation;

(Testimony of Kenneth G. Avery.)

that I wished to file the original of this document in the representation proceedings, and asked her if she was willing to accept the photostatic copy for her purposes in connection with the unfair labor charge hearing.

At that meeting she said that probably the best procedure was to submit payroll checks which the Board could then check against the union authorization cards to determine the authenticity of the signatures. So following that meeting on December 17 I did forward to Miss Bingham payroll checks with 86 employees that had been issued on November 8 and requested her to check those—the endorsements on those payroll checks against the union signature cards.

Q. (By Mr. Doty): Was this done by letter?

A. That was done by letter.

Q. Did you receive a reply from this letter in regard to the payroll checks under examination?

A. Yes, I received a reply that they had been checked against the union authorization cards, and I subsequently received a reply from General Counsel, Mr. Robert Yeates, returning the payroll checks and apologizing for the delay in returning them.

* * * * *

Cross Examination * * * * *

Q. (By Mr. Yeates): Mr. Handwerker advised you that there was, in his opinion, not a showing of interest by the union, an authentic showing of interest by the union?

(Testimony of Kenneth G. Avery.)

A. That's correct, in substance.

Q. And in support of his feeling on this, what information did he give you?

A. Mr. Handwerker stated that he had received word through his superintendent that the employees had stated they were not interested in a union and were completely satisfied with their working conditions.

Q. Well, now, as best you can, tell me exactly what he told you. [211]

A. That, in substance, is what he told me.

Q. Did you meet with Mr. Young or any of the supervisors of the company prior to the preparation of General Counsel's No. 2? A. No.

Q. Did you meet or discuss with any of the employees themselves anything in connection with General Counsel's Exhibit No. 2 before its preparation? A. No.

Q. Had you been advised by Mr. Doty that the usual and ordinary procedure or, rather, that the showing of interest was an administrative matter determined by the Board?

A. Mr. Doty so advised me.

Q. And he advised you of that at what time in relation to the preparation of General Counsel's Exhibit No. 2?

A. He gave me that information on November 29 when we had a conference in his office.

Q. Did he advise you of what the effect would be of a consent election agreement between the employer and the petitioning union?

(Testimony of Kenneth G. Avery.)

A. No, I don't think the effect of a consent election was discussed.

Q. Was a consent election discussed?

A. A consent election was discussed and a decision made not to consent at that particular time.

Q. Was the decision not to proceed with [212] the election at that time—whose decision was that?

A. That decision was counsel's decision in conference with Mr. Handwerker.

Q. From the information you have previously stated that Mr. Handwerker gave you?

A. That's correct.

Mr. Yeates: That's all.

Mr. Leonard: Just one or two questions, please, Mr. Avery.

Q. (By Mr. Leonard): In other words, on November 29th, based upon the information from Mr. Handwerker that the showing was not authentic for the reasons already stated, the decision of the company was not to proceed with a consent election; is that correct?

A. That is correct, for the reason that if there was not a sufficient representation and that could be brought to the attention of the Board, then there was no use wasting the employees' time by an election that would serve no purpose.

Q. And then this document called General Counsel's Exhibit No. 2 was prepared by you and the man you indicated and was circulated and was returned to you when? Do you recall?

A. I believe it was first returned to me on the

(Testimony of Kenneth G. Avery.)

afternoon of December 5th. However, it was not notarized, and I was therefore unable to use the document with the notary's form that I had originally attached to it, so subsequently I prepared the [213] last page of Exhibit No. 2 and had it executed by Mr. Kuhns. I believe that was about the 10th of December.

Q. And were there some subsequent meetings, conferences, between you and Mr. Handwerker and Mr. Doty after the 10th of December in connection with this matter? A. Oh, yes.

Q. And there was a time, was there not, after the 10th of December when the company indicated to the Labor Board that it would agree to a consent election? A. Not after the 10th, no.

Q. Well, was it on the 10th?

A. I believe that was on the 5th.

Q. It was on the 5th? A. Yes.

Q. On the 5th of December the company——

A. It was either the 5th or the 6th, Counsel.

Q. All right. In any case, it was either the day you received, or the day after you received from Mr. Young General Counsel's Exhibit No. 2 with the signatures on it?

A. It could have been before I received it.

Q. But after you had been advised of its contents? A. That's correct.

Q. That the employees had signed it?

A. That's correct.

Q. So prior to the time the company was aware of the fact that [214] the employees, or a large

(Testimony of Kenneth G. Avery.)

part of them, had consented to an election, it was after all the signatures were obtained on the document that the company consented to an election?

A. That's right. You are correct as to the timing. We did consent to a consent election after this had been signed, yes.

Q. Now, did Mr. Doty advise you sometime within the next two weeks or so after December 5th that the union would withdraw its charges in this case if the company would proceed with a consent election? Did Mr. Doty ever so advise you?

A. Yes, I believe that was mentioned. It was not seriously considered, so I have no clear recollection of that.

Q. Do you remember about when it was mentioned?

A. No, I have no recollection of that.

Q. Well, was it sometime before Christmas of 1957? It was sometime before Christmas of 1957, wasn't it?

A. No. I have no clear recollection. I believe that that was mentioned to me, but I don't recall when.

Q. Could you help us out by telling us whether it was within a week or two weeks from the time the company indicated it would consent to a consent election?

A. No, I couldn't, because we were interested then of the charge that was made, the information we received shortly after we decided to consent, and I think almost immediately I was advised by

(Testimony of Kenneth G. Avery.)

Mr. Doty that the representation election had been called off, which was set for December 10th. [215]

Q. The hearing had been set for December 10th?

A. Yes. That was the deadline against which we were working, of course.

Q. Did you advise or instruct, whichever might be proper, Mr. Doty to make a response to the union's proposal that the charges be withdrawn and there be a consent election?

A. I at all times advised Mr. Doty that we are not prepared to consent to an election after the charges had been filed.

Q. After December 10th?

A. After the charges had been filed, and I believe we heard about it on December 6th or thereabouts.

Q. You couldn't have heard it on December 6th, Mr. Avery, because they weren't filed until the 10th of December, as the exhibit shows.

A. The charges?

Q. Yes.

A. Well, I may be mistaken, but if you will refer to the record, I will be glad to refresh my recollection of that.

Mr. Doty: The 9th.

Q. (By Mr. Leonard): They were filed on the 9th and apparently service was made on you by a letter dated December 9th in San Francisco, so I presume you received it in Fresno on December 10th, but the date is of no importance.

(Testimony of Kenneth G. Avery.)

Q. May I consult my files? I believe there is another document we haven't received. [216]

Mr. Leonard: I have no objection.

Trial Examiner: Where is the original of those exhibits?

Mr. Yeates: Right here.

The Witness: Yes, that is a copy of the document I do have. It seems to me, to the best of my recollection, that I heard by telephone from Mr. Doty about the filing of these in advance of our getting the actual charge.

Q. (By Mr. Leonard): Well, they were filed on the 10th, so you may have heard from him on the 9th or the 10th.

Trial Examiner: Well, let's go ahead.

Mr. Leonard: Yes, sir.

Q. (By Mr. Leonard): You say that after a conference with Miss Bingham sometime later on, she suggested to you that the best procedure for you to follow in connection with checking the authenticity of those union authorization cards was to submit some payroll cards and the signatures would be checked?

A. I am sorry, I couldn't hear you.

Trial Examiner: Will the reporter kindly read the question?

(Question read.)

A. Yes, the payroll checks, if that is what you have reference to.

Q. (By Mr. Leonard): Yes.

A. And that is after I had requested or had

(Testimony of Kenneth G. Avery.)

permission to file the original of General Counsel's Exhibit No. 2 in the representation matter. [217]

Q. And did you submit the payroll checks?

A. I did.

Q. And did you receive a report from the National Labor Relations Board on what they had done with the checks? A. Yes.

Q. What was that?

A. I understand they checked them.

Q. And what did they tell you?

A. I don't recall the contents of the letter.

Trial Examiner: Was it in writing?

The Witness: I received a letter from Mr. Gerald Brown in writing, yes.

Trial Examiner: Will you look at it, please?

The Witness: Surely.

Trial Examiner: Maybe it will refresh your recollection.

The Witness: Yes, I received a letter from Gerald A. Brown, dated December 30, 1957.

Mr. Leonard: May I see it, please?

The Witness: Yes.

Mr. Leonard: I would like to offer in evidence the letter to which the witness has just made reference.

Trial Examiner: Any objections, gentlemen?

Mr. Yeates: No objection.

Mr. Doty: No objection. [218]

Mr. Avery: No objection.

Trial Examiner: There being no objection, the papers will be received in evidence, and I will

(Testimony of Kenneth G. Avery.)

kindly ask the reporter to mark it as Union's Exhibit No. 1.

* * * *

Q. (By Mr. Leonard): I just want to be certain that the record is clear on one thing, Mr. Avery: Prior to the preparation of General Counsel's Exhibit No. 2, your factual inquiry—I am not talking about the legal inquiry, but your factual inquiry resulting in your obtaining information in writing relating, one, to the 1956 election involving the Chemical Workers and, two, in writing a list of the 86 employees who were on the payroll as of November 6th and, three, some conversations with Mr. Handwerker, that was the factual matter that you had; is that correct? [219] Is that all the factual matter you had?

Trial Examiner: No. He said and the papers.

Q. (By Mr. Leonard): And the papers in the representation case here?

A. That is correct.

Q. There wasn't anything else?

A. That is correct.

* * * * *

LAWRENCE YOUNG

a witness called by and on behalf of the Respondent, being first duly sworn, was examined and testified as follows:

Direct Examination

Trial Examiner: What is your name, sir?

The Witness: Larry Young. [220]

(Testimony of Lawrence Young.)

Trial Examiner: Is it Lawrence or Larry?

The Witness: Well, it's really Lawrence, but most people know me by the name of Larry.

Trial Examiner: But it is Lawrence?

The Witness: Yes, sir.

Trial Examiner: Where do you live, Mr. Young?

The Witness: 4353 North Harrison.

Trial Examiner: Fresno?

The Witness: Fresno.

* * * * *

Q. (By Mr. Avery): Mr. Young, are you connected with the California Compress Co., Inc., the Respondent in this matter? A. I am.

Q. And what position do you hold with that company? A. Superintendent.

Q. What are your duties?

A. Charge of maintenance and production.

Q. Do you have any supervisors working under you? A. Yes, I do.

Q. And who are those supervisors?

A. Don Robinson, Charlie Kuhns, Henry Hayes, Ray Stidman. [221]

* * * * *

Q. Now, was it brought to your attention, Mr. Young, that a petition had been filed by the International Longshoremen's and Warehousemen's Union, Independent, requesting a representative election? A. Yes.

Q. And how was that called to your attention?

A. Mr. Handwerker told me about it.

Q. Included in that petition, it was stated, was

(Testimony of Lawrence Young.)

it not, that the union purported to represent a substantial number of employees?

A. Yes. [222]

* * * * *

Q. (By Mr. Avery): Will you state the conversation between you and Mr. Handwerker concerning the filing of this representative petition?

Mr. Leonard: That is objected to on the grounds that it is immaterial and is self-serving. It would be——

Trial Examiner: Overruled.

Q. (By Mr. Avery): You may state it.

A. Mr. Handwerker asked me if I thought it was possible that many of our employees, or if any of our employees, had signed cards or had asked for representation, and I told him definitely I was positive myself that they hadn't. That was the information I gave him.

Trial Examiner: Had not?

The Witness: Had not.

Q. (By Mr. Avery): Following that first conversation, did Mr. Handwerker instruct you to take any action to verify your opinion? A. Yes.

Q. And what was that action?

A. He asked me if there was any way I could find out if it was true, and I told him there was. All I had to do was ask the boys.

Q. And did you ask the boys?

A. I asked three or four of the boys. [223]

* * * * *

(Testimony of Lawrence Young.)

Q. (By Mr. Avery): What did you report to Mr. Handwerker?

Mr. Leonard: We object to it on the grounds that it is immaterial and no proper foundation has been laid.

Trial Examiner: Overruled. Lay a foundation first, will you, Mr. Avery?

Q. (By Mr. Avery): Approximately what date did you report to Mr. Handwerker as a result of your investigation? [224]

A. The date I couldn't tell you.

Trial Examiner: About how long after your first conversation?

The Witness: The same day.

Q. (By Mr. Avery): Who was present besides yourself and Mr. Handwerker, if anyone?

A. No one.

Trial Examiner: When was the first conversation? Did you fix a date, Mr. Avery?

Mr. Avery: No, we didn't fix a date. It was sometime after the filing of the petition.

Trial Examiner: Well, how soon after that?

Q. (By Mr. Avery): Do you know approximately when Mr. Handwerker advised you of the filing of the representation petition?

A. As far as I remember, it was the same day we got it.

Q. Do you recall now approximately the date you got it?

A. No, I wouldn't even try.

Q. All right. Now, referring to your conversation with Mr. Handwerker, after you made your

(Testimony of Lawrence Young.)

investigation you talked to some of the men, and you say you and Mr. Handwerker were present. Where was it? Was it in your office or in his office?

A. His office.

Q. His office? A. Yes.

Q. And you say no one else was present? [225]

A. No.

Q. What was told to Mr. Handwerker?

Mr. Leonard: I object to that. He is about to express an opinion he derived from other people and that is the foundation I think we are entitled to.

Trial Examiner: I will overrule the objection. You will have an opportunity to bring it out if you want to do it.

Mr. Leonard: All right.

Q. (By Mr. Avery): What did you tell Mr. Handwerker?

A. I was still convinced that there was no truth in the fact that the boys signed for representation.

Trial Examiner: Did you tell him the source of your information?

The Witness: Yes.

Trial Examiner: Did you tell him to whom you spoke?

The Witness: Yes.

Trial Examiner: Tell us all about the conversation.

The Witness: Well, I talked to——

Trial Examiner: Tell us what you said to Mr. Handwerker at that time.

(Testimony of Lawrence Young.)

The Witness: Well, I told him that I asked some of the boys about it, what I considered to be a rumor, and they told me that no one had signed or was interested in a union.

Trial Examiner: All right.

Q. (By Mr. Avery): Now, following that [226] conversation, which was shortly after you had first been informed of a representation, that a petition had been filed, did you have any further conversation with Mr. Handwerker in which he instructed you to do anything with regard to finding out whether your employees had authorized the union to file this petition?

A. No. I had already done that.

Q. All right. Now, referring to approximately December 4, 1957, did you have a conversation with Mr. Handwerker in which he gave you some instructions? A. Yes.

Q. All right. State the nature of that conversation and in general the instructions you received.

* * * * *

The Witness: He gave me the document.

Q. (By Mr. Avery): You are referring to General Counsel's Exhibit No. 2? [227]

A. Yes, that's it.

Q. All right.

A. He explained to me its contents, and he asked me if I would call my foremen in and explain it to them and have them circulate it among the men and explain to the men what it meant and

(Testimony of Lawrence Young.)

let them read it and find out who had, if they had, signed cards asking for representation.

Q. Following that conversation with Mr. Handwerker and on the same date, did you have a meeting with your supervisors? A. I did.

Q. And which supervisors?

A. Don Robinson, Charlie Kuhns, Henry Hayes.

Q. And where did that meeting take place?

A. In my office.

Q. And what did you state to your supervisors on that occasion?

Mr. Leonard: That is objected to on the grounds that it is incompetent, irrelevant and immaterial and self-serving.

Trial Examiner: Overruled.

A. I explained the document to them.

Trial Examiner: Tell us what you said. That is a conclusion. Tell us as nearly as you can what you said to these foremen.

The Witness: I told them that they were to get the information [228] or circulate this document; that we are not interested at all in the employees' union activities; all we wanted to know was if they had signed cards asking for representation and to make it very clear that it would have nothing to do with their job as far as our plant was concerned, or with any affiliations they had with any organization.

Q. (By Mr. Avery): Did you hand the original, of which Exhibit No. 2 is a photostatic copy, to one of your foremen? A. I did.

(Testimony of Lawrence Young.)

Q. And to whom?

A. Mr. Charlie Kuhns.

Mr. Leonard: Mr. Examiner, without repeating it all the time, I take it I may have a continuing objection to this on the ground that it is self-serving.

Trial Examiner: Overruled.

Q. (By Mr. Avery): And did you instruct Mr. Kuhns what to do with that document?

A. I did.

Q. And what were your instructions specifically to Mr. Kuhns in addition to what you have already said?

A. Nothing in addition to what I have already said to Mr. Kuhns, except I wanted each foreman to talk to his own men and explain it to them. [229]

* * * * *

Q. (By Mr. Avery): Were all of your 86 employees who were in production and maintenance work able to read and write?

A. That I can't answer for you. I don't know.

Q. Now, did you at any time during the circulation of this petition talk to any of the 86 employees?

A. Yes, I did.

Q. And on what occasion?

A. It was on the morning of December 5th.

Q. At approximately what time?

A. Approximately nine o'clock.

Q. And where?

A. In Mr. Robinson's office.

Q. Who was present at that time?

(Testimony of Lawrence Young.)

A. Don Robinson, Charlie Kuhns, Harold Judson, Willie DeBise.

Q. What was your occasion in going to Mr. Robinson's office at that time?

A. To pick up shipping orders.

Q. Now, was anything said to you or either Mr. DeBise or Mr. Judson when you entered the room?

A. Yes. [231]

Q. What was said?

A. Mr. DeBise asked me outright if there was any truth in the rumor that if they did not sign the petition that was on the plant they would lose their jobs.

Q. And what did you reply?

A. Definitely not. There was no truth in it. It had nothing to do with their jobs at all. It would affect them in no way as far as I knew with their standing with the union. [232]

* * * * *

Q. Now, a statement has been made, Mr. Young, that sometime in November, date unknown, you addressed a gathering of the employees in the smoke room or boiler room. Do you recall any such occasion? A. Yes, I do.

Q. Approximately when was that?

A. I couldn't possibly give you a date on it.

Trial Examiner: Well, could you tell us what month it was?

The Witness: I can tell you that it was after we had been notified that the boys had asked for representation by the union.

(Testimony of Lawrence Young.)

Trial Examiner: Well, how long after?

The Witness: Oh, three or four days. [233]

* * * * *

Cross-Examination

Q. (By Mr. Leonard): Mr. Young, I just want to fix some time sequences if I can.

As I understand it, the very first information that you had about this matter was that Mr. Handwerker informed you that a petition for representation had been filed; is that right?

A. That's right.

Q. And you can't fix the date of that, but you think it was shortly after the petition was received by the company, within a day or so, that Mr. Handwerker talked to you?

Trial Examiner: He said he thought it was the same day.

A. Yes. [235]

Q. (By Mr. Leonard): Now, was it on the same day that Mr. Handwerker first talked to you that you had this discussion in the smoke house about which you have given testimony?

A. No.

Trial Examiner: He said about three or four days later.

Mr. Leonard: Well, maybe my notes are inaccurate.

Q. (By Mr. Leonard): It was three or four days later? A. Approximately.

Trial Examiner: How long was that talk of

(Testimony of Lawrence Young.)

yours in the smoke house? How long did that take?

The Witness: It was very brief.

Trial Examiner: About how long?

The Witness: Probably two or three minutes.

Q. (By Mr. Leonard): As I recollect it, you said none of the men said anything? A. No.

Q. The men just remained silent?

A. That's right.

Q. You told the men what you had to say and the men remained silent and then you left?

A. That's right.

Q. And then you reported back to Mr. Handwerker and at some later date——

A. I didn't report to Mr. Handwerker at that time.

Q. You didn't tell him about the meeting in the smoke house? [236]

A. There was nothing to tell him.

Q. You didn't tell him anything about it?

A. No.

* * * * *

CHARLES H. KUHNS

a witness called by and on behalf of the Respondent, being first duly sworn, was examined and testified as follows:

Direct Examination

Trial Examiner: What is your name, sir?

The Witness: Charles H. Kuhns.

Trial Examiner: And where do you live, Mr. Kuhns?

(Testimony of Charles H. Kuhns.)

The Witness: 412 San Jose, Clovis.

Trial Examiner: Is that in Fresno?

The Witness: Well it's about six miles from here.

* * * * *

Q. (By Mr. Avery): Mr. Kuhns, are you [237] connected with California Compress Co., Inc., the Respondent in this matter? A. Yes, sir.

Q. What is your position with that company?

A. I am a foreman of the receiving crew. [238]

* * * * *

Q. Mr. Kuhns, referring to December 4, 1957, on that date were you in a meeting with Mr. Lawrence Young, your superintendent, Mr. Henry Hayes and Mr. Donald Robinson?

A. Yes, sir.

Q. What was said at that meeting?

* * * * *

A. Mr. Young called us into his office and told us that he had [239] an affidavit to sign, for the men to sign if they had not signed union cards or did not know what they were signing at the time, and he read the——

Q. (By Mr. Avery): You are referring to General Counsel's Exhibit No. 2?

A. Well, I believe so.

Trial Examiner: Well, that is what it is.

Q. (By Mr. Avery): Well, let me show you the original of this document.

Trial Examiner: Is this what you are referring to?

(Testimony of Charles H. Kuhns.)

The Witness: Yes, sir, that's it.

Trial Examiner: All right. Go ahead, Mr. Avery.

Q. (By Mr. Avery): I will show you the original of Exhibit No. 2 and ask you if that was the document that he had with him, without the signatures on it. A. Yes, sir.

Q. Yes. Did you also read it?

A. Yes, sir, I read it.

Q. Now, what particular instructions did he give you? In other words, what was your part to play?

A. I was to circulate this document among the receiving crew and also go with Mr. Hayes and Mr. Robinson to their crews, and I was supposed to witness the signatures on this document. I was to make sure that the right men were signing. [240]

* * * * *

Q. (By Mr. Avery): Now, tell me what you did with the original of General Counsel's Exhibit No. 2 and Respondent's Exhibit No. 2.

A. I took these papers down to the plant and first went to my own crew, my receiving crew, and I didn't call a special meeting. I went out to where they were working. So therefore I didn't get them in any special order, and I can't remember where I went first or anything like that, but I took this to my men and read it to them, and if they could read or if they wanted to read it, I would let them read it. And I asked them if they would sign it, and all but Mr. Richardson and Mr. Merritts signed it.

I also told them that it would have no bearing

(Testimony of Charles H. Kuhns.)

whatsoever on their job. Mr. Richardson and Mr. Merritts didn't sign. I had them both together at all times. Mr. Richardson and Mr. Merritts did not even look at the document. [242]

They said they signed a card and they didn't wish to sign it, and that's all there was to that.

And then I went to Mr. Hayes, and he also wasn't at any one spot. We covered all areas of the compress ground, meeting his men, and he explained it to them, or let them read it, and they signed it.

Q. Was there any member of Mr. Hayes' crew that did not sign it?

A. No. All of Mr. Hayes' crew signed this document with their signature, except Spencer Carter who put his "X" there and that "X" was witnessed.

Do you want times on this, too?

Q. Well——

A. This all started at one o'clock.

Q. On December 4th?

A. On December 4th.

Q. Yes.

A. And my crew and Mr. Hayes' crew was completed at 3:00 o'clock. At 3:00 o'clock I took this document into Mr. Robinson's office, where he called the men in and explained it to the men when he wasn't busy, and the men that were in there when he was busy, why, I would explain it to them or let them read it or read it to them.

Trial Examiner: Did you call them in at one time?

The Witness: No. [243]

(Testimony of Charles H. Kuhns.)

Trial Examiner: Was it a whole group?

The Witness: No. He has a certain number of relief men and they would relieve so three or four men could come in at a time, so we didn't have to shut the press down. He explained it to them or let them read it and asked them if they had not signed it, if they would sign this document.

Q. (By Mr. Avery): Now, did you complete obtaining all the signatures of Mr. Robinson's crew on December 4th?

A. No, sir. At 5:00 o'clock at night—wait a minute. I didn't complete Mr. Hayes' crew at the time I said. I just want to make it right. There was some of Mr. Hayes' men that were spotting cotton at the time, and they came in about 5:00 o'clock that night, as I remember it.

Q. All right.

A. And I imagine it was somewhere between 10 and 20 men in Mr. Robinson's crew that we hadn't talked to. There was also one on the night crew at the time, Mr. Ambers, I believe, that signed it when he came to work at around 5:30.

Q. In other words, you got all of Mr. Hayes' crew and all of your crew that were available by 3:00 o'clock? A. Yes, sir.

Q. And those that were not available, you picked up later during the day, either before or after 5:00 o'clock? A. Yes, sir.

Q. You say you did not complete all of Mr. Robinson's crew by 5:00 o'clock? [244]

A. No, sir. I took this paper back up to Mr.

(Testimony of Charles H. Kuhns.)

Young's office and left it there overnight. I believe they locked it in the safe, and I picked it up the following morning and took it back to Mr. Robinson's office and at that time we completed it, the ones that wanted to sign.

Q. When did you start obtaining signatures on the morning of the 5th?

A. I imagine it was about 8:15 or 8:20 after I had organized my crew, lined out the work for them.

* * * * *

Q. The last signature you had obtained before 10:00 o'clock; is that correct? A. Yes, sir.

Q. And then what did you do with the document with the signatures on it?

A. I went to town and I had it notarized that I had witnessed all the signatures and then I brought it up to your office, [245] Mr. Avery's office, and gave it to him.

Q. Now I will show you a sheet of paper, Mr. Kuhns, and ask you if this is your signature on it and if that is the notarization that you obtained on the 5th. A. Yes, sir.

Q. Now, subsequently I had you come to the office and sign a different type of affidavit to attach to the document; is that correct?

A. Yes, sir. [246]

* * * * *

Q. (By Mr. Avery): Now, referring to the morning of December 5th when you were completing the signatures on General Counsel's Exhibit

(Testimony of Charles H. Kuhns.)

No. 2 of the remaining members of Mr. Robinson's crew, were you in the office at a time when Mr. Willie DeBise, Mr. Harold Judson, Mr. Robinson and Mr. Larry Young were present?

A. Yes, sir.

Q. At that time did you hear any conversation between Mr. Willie DeBise and Mr. Lawrence Young?

A. No, sir. I heard them talking, but I wasn't listening.

Q. You didn't hear the substance of it?

A. No, sir, I don't believe. I can't remember.

Q. Well, at this time you can't remember the substance of what was said? A. No. [247]

* * * * *

Cross Examination

Q. (By Mr. Yeates): Mr. Kuhns, at the time you approached the employees with General Counsel's Exhibit No. 2, did you explain to them the purpose of that document, what you intended to do with it, or what the company intended to do with it? A. No, sir.

Q. And, as I understand your testimony, you told them that it was your understanding or Mr. Young's understanding or the company's understanding that the men had not signed union cards?

A. Yes, sir.

Q. And that was the purpose of the document?

A. Yes, sir.

Q. But you did not tell them what would be done ultimately with the petition?

(Testimony of Charles H. Kuhns.)

A. I had no knowledge of what would be done with the document.

Q. Was there ever any posting by the company, and I am referring particularly to after the discussion by Mr. DeBise and Mr. Judson in the office of Mr. Young wherein they asked if they would be fired if they didn't sign the petition,— [252]

* * * * *

A. Will you repeat that, please?

Trial Examiner: Will the reporter kindly read the question?

(Question read.)

Q. (By Mr. Yeates): Did the company post any written notification to the employees referring to the matter Mr. Young had told Mr. DeBise and Mr. Judson? A. No, sir.

* * * * *

Q. (By Mr. Leonard): Mr. Kuhns, as I understand it, this [253] petition, General Counsel's Exhibit No. 2, was given to you on the morning of December 4th by Mr. Young; is that correct?

A. Between 12:30 and 1:00 o'clock, I believe.

Q. And you were told that you were to be present when all the employees signed because they wanted to have somebody to be a witness?

A. That's right.

Q. That was your function, among others, to be a witness? A. That's right.

Q. And you took it to your own crew first?

A. Yes, sir.

Q. Did Mr. Young tell you why he wanted Rob-

(Testimony of Charles H. Kuhns.)

inson and Hayes to be present when you were taking it to their crews?

A. They were presented—they were to present it to their own crew.

Q. In other words, each foreman or supervisor was to present it to his own crew?

A. That's right.

Q. In other words, that man's immediate supervisor was to be there when it was presented to him; is that right?

A. That's right.

Q. Mr. Merritts is a member of your crew; is that right?

A. Yes, sir.

Q. And you first spoke to him about what time on the 4th of December, approximately? [254]

A. Around 1:30.

Q. And he indicated to you that because he had signed a union authorization card, he did not choose to sign this document?

A. That's right.

Q. And then you went on about the business of getting other signatures and taking it to Hayes' and Robinson's crews; is that right?

A. Yes.

Q. Why did you go back to Mr. Merritts?

A. I just happened to see him when I was coming out of the office.

Q. You wanted him to sign the document?

A. No. This was done in a hurry. I didn't stop any one man too long and when he said he signed it, I just wanted to make sure.

Q. But Merritts told you he already signed a union card and didn't want to sign this document?

A. I believe so.

(Testimony of Charles H. Kuhns.)

Q. But nonetheless, about 5:00 o'clock that afternoon you asked him questions as to whether or not he wanted to sign this document?

A. That's right. [255]

* * * * *

Q. Now, sometime between the 6th of November and the 10th of November you called the men together in your office? A. That's right.

Q. Is that correct, sir? A. That's right.

Q. Preceding that, that is, just before that, did you have any meeting or conference with Mr. Young? A. Yes, sir.

Q. How long before the time you called the men together? A. About two hours.

Q. And who was present besides you and Mr. Young?

A. I believe Mr. Hayes was there and Mr. Robinson.

Q. And, without going into what you discussed, is it fair to say that you discussed the problem of the representation petition and the questions connected with the representation? A. No. [256]

* * * * *

Trial Examiner: Tell us what it was.

The Witness: It had something to do with the rumor that 80 percent of the men signed. At that time I didn't know we received a petition. It was just the fact that a rumor was going around.

Q. (By Mr. Leonard): Did Mr. Young ask or suggest or direct the three foremen to find out what the fact was? A. He told us to listen.

(Testimony of Charles H. Kuhns.)

Q. To listen?

A. To try—— Strike that out. He asked us to try to find out if there was any basis for the rumor.

Q. I see.

Trial Examiner: Did he tell you how to find out?

The Witness: No, sir. He left that up to our discretion, I believe.

Q. (By Mr. Leonard): And was it following that suggestion of Mr. Young's that you called your crew together? A. Yes, sir. [257]

* * * * *

Q. Did you report back to Mr. Young——

A. Yes, sir.

Q. (Continuing): ——the results of the meeting you had with your crew?

A. Yes, sir.

Q. You did? A. Yes, sir.

Trial Examiner: When did you do that?

The Witness: The same night, I believe. Well, I wouldn't want to put any time down because I saw him a lot of times a day.

Trial Examiner: What did you tell him?

The Witness: I told him that all of my men seemed to be contented, and they didn't want a union. They said they didn't want any, and they all seemed to be happy.

Q. (By Mr. Leonard): They just didn't respond to you one way or another when you asked them if they signed up? They didn't say they did or didn't?

(Testimony of Charles H. Kuhns.)

A. Some of them said they did not.

Q. Some of them said they did not?

A. That's right.

Q. And some of them said nothing? [258]

A. That's right. [259]

* * * * *

HENRY HAYES

a witness called by and on behalf of the Respondent, being first duly sworn, was examined and testified as follows:

Direct Examination

Trial Examiner: What is your name, sir?

The Witness: Henry Hayes.

Trial Examiner: Will you kindly spell your last name?

The Witness: H-a-y-e-s.

Trial Examiner: Where do you live?

The Witness: 14 Myers, Fresno.

* * * * *

Q. (By Mr. Avery): Mr. Hayes, are you employed by California Compress Co., Inc., the Respondent in this matter? A. I am.

Q. And what is your position with that company? A. Yard foreman. [260]

* * * * *

Q. Now, Mr. Hayes, referring to December 4, 1957, did you attend a meeting at which Mr. Lawrence Young, Mr. Donald Robinson and Mr. Charlie Kuhns were present? A. I did.

Q. And what was said at that time? [261]

* * * * *

(Testimony of Henry Hayes.)

A. Well, I was called in to Mr. Young's office to sign a petition. We heard rumors that some of the fellows signed union cards, and we wanted to find out if it was true or false.

Q. (By Mr. Avery): Now, did you receive any instructions from Mr. Young as to what he wanted you to do with the General Counsel's Exhibit No. 2, which is the document in front of you?

A. Well, I was to take it to my men after Mr. Kuhns got through with his men, and Mr. Kuhns was supposed to go with me, which he did, and I read it off to my men and explained what it was.

Q. How did you approach the men in your group? Did you do that individually or in groups?

A. Individually, because I had to go all over the yard to get them.

Q. Now, did you either read the document or let the men read the document?

A. I read it to them and explained it to them and told them if anybody wanted to read it, why, they could.

Q. What explanation did you give to your men?

A. Well, I told the men that this petition was to find out if they signed a union card or not, and if they signed a union [262] card or had not signed a union card, I would still like them to sign this document. [263]

* * * * *

(Testimony of Henry Hayes.)

Cross-Examination * * * * *

Q. (By Mr. Leonard): Mr. Hayes, sometime between the 6th and 10th of November, right after this petition for representation was filed by the union, didn't you attend a meeting in Mr. Young's office at which were present yourself, Mr. Young, Mr. Robinson and Mr. Kuhns? A. I did.

Q. And was there some discussion in that meeting about some rumors that had been going around that the men had signed up for the union? [268]

A. Yes.

Q. Were you given any instructions by Mr. Young in connection with that matter?

A. No, not specific.

Q. Well, whether they were specific or not?

A. He just asked me to go around to my men and try to find out if anyone signed a union card or not or whether anyone was interested in a union.

Q. And did you do anything about that?

A. Well, I spoke to some of the men, and the answer I got was no.

Q. You did speak to the men about it?

A. Yes. I asked them if they were happy.

Q. The way you put it was that you asked them if they were happy working out there?

A. That's right.

Q. Did you ask them if they signed a union card or not?

A. No, sir, I didn't ask them if they signed a union card. * * * * * [269]

BONNIE MERRITTS

a rebuttal witness called by and on behalf of the General Counsel, having been previously duly sworn, resumed the stand and testified further as follows: [283]

Direct Examination

Q. (By Mr. Yeates): Mr. Merritts, you are the gentleman who was previously sworn at this hearing? A. Yes, sir.

Q. And you testified before; is that correct?

A. That's right.

Q. Now, you were present in the hearing room when Mr. Kuhns gave his account of the conversation between Mr. Kuhns and yourself following your discussion in regards to the petition where he states that he told you that because of your age, he thought the union was a good thing for you; did you hear that testimony by Mr. Kuhns?

A. He told me that.

Q. Well, first, Mr. Merritts, did you hear his conversation when he testified, when he said that?

A. Oh, yes.

* * * * *

Q. (By Mr. Yeates): Will you state now what conversation was had between yourself and Mr. Kuhns at that time?

A. Yes. I met Mr. Kuhns just as he was coming out of the [284] office door, and he said to me, he said, "If I were you, at your age, I would go down and have my name taken off and tell them you didn't know what you were signing."

I said in reply that I did know what I was

(Testimony of Bonnie Merritts.)

signing and it didn't make any difference to me. That's all.

Q. Now, prior to that statement to you had he asked you whether you were interested in changing your mind or getting your name removed from the union card?

A. That was the only time.

Q. Well, I mean during that conversation?

A. No, he didn't say any more about it.

Q. All right. Now, in your mind, Mr. Merritts, did you feel that that is the statement he made?

A. That is the statement he made in the conversation between he and I.

Q. Is there any possibility that you misunderstood the statement, as far as you know?

A. No, I didn't misunderstand it because he was talking directly to me. [285]

* * * * *

GENERAL COUNSEL'S EXHIBIT No. 2

State of California

County of Fresno—ss.

The undersigned, each for himself, after first being sworn, deposes and says:

That he was on the 6th day of November, 1957, and is now, employed by California Compress Co., Inc., a corporation, at its cotton compressing plant at Nielsen Avenue and Marks Street, Fresno, California, and in such employment performs production and maintenance work; that he has not affixed his signature to any card or paper intending

General Counsel's Exhibit No. 2—(Continued)
thereby, or being advised that such signature
would be used, to support a claim of representa-
tion by International Longshoremen's & Ware-
housemen's Union, Independent, and that he has
not knowingly signed any such document.

* * * * *

State of California
County of Fresno—ss.

The undersigned, C. H. Kuhns, after first being
sworn, deposes and says:

That he knows each and all of the eighty-two
employees of California Compress Co., Inc., who
affixed their signatures to the attached document;
that each of said eighty-two employees signed their
name to the attached document in his presence,
with the exception of the employee by the name
of Spencer Carter; that Spencer Carter cannot
write; that Spencer Carter in my presence marked
an "x" on the line for his signature and that
Spencer Carter's foreman, Mr. Henry Hayes, at
Spencer Carter's request and in his presence signed
the name "Spencer Carter" immediately following
said "x," in my presence.

/s/ C. H. KUHNS.
C. H. Kuhns.

Subscribed and sworn to before me this 10th day
of December, 1957.

/s/ KENNETH G. AVERY,
Notary Public in and for
Said County and State.

INTERNATIONAL
LONGSHOREMEN'S & WAREHOUSEMEN'S
UNION

APPLICATION

Date 8-12 1957

I Abraham Canty
do hereby make application

to the International Longshoremen's & Warehousemen's Union for membership, and authorize the Union, or any of its locals or representatives designated by it to engage in collective bargaining on my behalf. I promise to observe the Constitution and By-Laws and all decisions and actions thereunder.

I am employed by Calif. Compress Type of work Light

My address is 226 W. Chandler St
(Street and Number) (City) (Zone) (State)

My age is 45

Abraham Canty county
(Signature)

(See other side)

LOCAL STAMP WITH
NUMBER AND ADDRESS
#57
1028 F. ST.
FRESNO, 6
CALIF.

INTERNATIONAL
LONGSHOREMEN'S & WAREHOUSEMEN'S
UNION

APPLICATION

Date 10-22-1957

I Willis Ross
do hereby make application

to the International Longshoremen's & Warehousemen's Union for membership, and authorize the Union, or any of its locals or representatives designated by it to engage in collective bargaining on my behalf. I promise to observe the Constitution and By-Laws and all decisions and actions thereunder.

I am employed by Calif. Compress Type of work Labor

My address is 1816 5th St Fresno Calif
(Street and Number) (City) (Zone) (State)

My age is 32

Willis Ross
(Signature)

(See other side)

LOCAL STAMP WITH
NUMBER AND ADDRESS
#57
1028 F. STREET
FRESNO, 6 CALIF.

GENERAL COUNSEL'S EXHIBIT No. 7-C

National Labor Relations Board

NOTICE

The issuance of the notice of formal hearing in this case does not mean that the matter cannot be disposed of by agreement of the parties. On the contrary, it is the policy of this office to encourage voluntary adjustments. The examiner or attorney assigned to the case will be pleased to receive and to act promptly upon your suggestions or comments to this end. An agreement between the parties, approved by the Regional Director, would serve to cancel the hearing.

However, unless otherwise specifically ordered, the hearing will be held at the date, hour and place indicated. Postponements will not be granted unless good and sufficient grounds are shown and the following requirements are met:

- (1) The request must be in writing;
- (2) Grounds therefor must be set forth in detail;
- (3) Alternative dates for any rescheduled hearing must be given; and
- (4) Copies must be simultaneously served on all other parties (listed below), and that fact must be noted on the request.

Except under the most extreme conditions, no request for postponement will be granted during

General Counsel's Exhibit No. 7-C—(Continued)
the three days immediately preceding the date of
hearing.

California Compress Co.
Neilson and Marks Streets
(P. O. Box 189)
Fresno, California

International Longshoremen's and
Warehousemen's Union, Independent
240 Montgomery Street
San Francisco 4, California
Attn: Norman Leonard, Esq.
(in duplicate)

Courtesy copy to:

Paul K. Doty, Esq.,
Doty, Evans & Quinlan
Attorneys at Law
Suite 415, T. W. Patterson Bldg.
Fresno 21, California

RESPONDENT'S EXHIBIT No. 1

AFFIDAVIT OF KENNETH G. AVERY

State of California
County of Fresno—ss.

Kenneth G. Avery, being first duly sworn, deposes and says:

That I am an attorney at law and a member of the law firm of Avery, Meux & Gallagher, and am

Respondent's Exhibit No. 1—(Continued)
retained as general counsel by California Compress Co., Inc., a California corporation.

That on or about the 27th day of November, 1957, I was telephonically advised by Mr. Winston P. Handwerker, General Manager of California Compress Co., Inc., that a petition had been filed with the National Labor Relations Board by the International Longshoremen's & Warehousemen's Union, Independent, for the purpose of conducting a representation election, and that in said petition it was alleged by the union that a substantial number of employees of California Compress Co., Inc. wished to be represented for purposes of collective bargaining by said union. Mr. Handwerker advised me that the National Labor Relations Board claimed to have on file authorization cards signed by approximately 80% of the 86 production and maintenance employees to the effect they wished to be represented by said union and that the National Labor Relations Board appeared to be satisfied that a sufficient showing of interest had been made to justify a hearing on December 10, 1957, upon the question of whether an election should be held even though Mr. Paul K. Doty, as special attorney for California Compress Co., Inc., had advised the National Labor Relations Board that California Compress Co., Inc. did not believe it was possible that any substantial number of employees had knowingly signed such cards. Mr. Handwerker stated that he sincerely believed that there was no substantial number of employees who wished to be

Respondent's Exhibit No. 1—(Continued)
represented by said union and that many employees had stated that they knew of no employees who wished to be represented by said union. Mr. Handwerker instructed me to discuss with Mr. Doty what steps could be taken to induce the National Labor Relations Board to check the authenticity of the cards which had been filed by them with the union and to determine whether as a matter of fact there had been a sufficient showing of interest to justify an election.

That on November 29, 1957, I had a meeting with Mr. Paul K. Doty of the law firm of Doty, Evans & Quinlan, and among other cases we reviewed the case of Globe Iron Foundry, 112 N.L.R.B. 145, which indicated that a proper procedure for bringing to the attention of National Labor Relations Board the question of the authenticity of authorization cards and to secure a re-determination of whether there was a sufficient showing of interest was to obtain the signatures of a sufficient number of employees to a statement that they had not affixed their signatures to any card or paper intending thereby, or being advised that such signatures would be used to support a claim of representation by the petitioning union and that they had not knowingly signed such document.

That pursuant to the authority of this case I prepared a form of affidavit using substantially the same language as used in the document referred to in the Globe Iron Foundry case and delivered

Respondent's Exhibit No. 1—(Continued)
said form of affidavit to Mr. Winston P. Handwerker for presentation to his employees. I advised Mr. Handwerker that his employees should be requested to sign such affidavit if the facts therein stated were true and correct as to each employee but that, in requesting such employees to sign the document, he should be careful that no language be used which could in any way be construed to be a threat of reprisal, or force, or promise of benefit, and that it should be made clear to his employees that their employment would be in no way affected regardless of whether or not they signed such document.

/s/ KENNETH G. AVERY.

Subscribed and sworn to before me this 17th day of December, 1958.

[Seal] /s/ ILMA H. PERRIN,
Notary Public in and for Said
County and State.

[Stamped]: Received December 18, 1957, National Labor Relations Board.

UNION'S EXHIBIT No. 1

National Labor Relations Board

Twentieth Region

630 Sansome St., San Francisco 11, California

Telephone Yukon 6-3111

Kenneth G. Avery, Esq.
605 Security Bank Building
Fresno 21, California

December 30, 1957

Re: California Compress Company—Case No. 20-
RC-3427

Dear Mr. Avery:

We have considered the allegations which you have made and the evidence which you have submitted relating to the validity of the showing made by the petitioner in the above-entitled case. From a consideration of such evidence, as well as from our own independent investigation, we are satisfied that there is no reasonable basis to find that the showing is not valid and, therefore, we conclude that the Union has made a valid showing sufficient to support its petition.

Although the charge against your client, filed in Case No. 20-CA-1366, is a separate proceeding, it is not wholly unrelated in some of its aspects. Our investigation of the charge case is not yet complete, but I feel that I should advise you that information presently at hand indicates the possibility that your instructions regarding the circulation of the petition in the instant case were not closely followed. We have some evidence which would indi-

Union's Exhibit No. 1—(Continued)

cate that supervisory personnel made coercive and unlawful statements to employees during the course of circulating the petitions.

The charge has been assigned to Mr. Robert Yeates, attorney in this office, and he will communicate with you directly regarding it in the near future.

Very truly yours,

/s/ GERALD A. BROWN,
Regional Director.

CERTIFICATE

This is to certify that the attached proceedings before the National Labor Relations Board for the 20th Region in the matter of: Case No. 20-CA-1366—California Compress Company, Inc., and International Longshoremen's and Warehousemen's Union, Fresno, California, March 18-19, 1958, were had as therein appears, and that this is the original transcript thereof for the files of the Board.

FRANK J. McCABE,
Official Reporters,
/s/ By ERNEST CAPEFERN,
Field Reporter.

